United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit
FILED MAY - 9 1960
Joseph W. Stewart
CLERK

No. 15,661

CHARLES HENRY TURPIN, JR.,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

20

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM B. BRYANT
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Washington 4, D. C.
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Of Counsel:
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Washington, D. C. ROBERT L. THIEL EX 3-0625

QUESTIONS PRESENTED

I. When an accused is arrested at 12:15 P.M. on a week-day, and taken to a nearby police precinct where he is subjected to intensive, uninterrupted interrogation for over five hours -- without food, although he requests it -- are incriminating statements finally obtained from him at 5:46 P.M. admissible into evidence?

Where the above circumstances exist and where, immediately after arraignment at 11:00 P.M., it is arranged for the defendant to have incriminating conversation with a citizen, are such conversations admissible as evidence in subsequent prosecution?

II. When a jury requests an item for its inspection, which item is not a part of the evidence in the case, and defense counsel objects to reopening the case for the purpose of receiving the item, is it not error for the Court to lament the fact that an objecting counsel has made it impossible for the Court to comply with the jury's request, and at the same time effectively disclose to the jury the identity of the objecting counsel.

III. In prosecution for homicide is it not error for a Court to give a specific instruction on self-defense which omits any reference to "apparent danger and necessity" as a justification for resorting to self-defense, when the jury has asked for an explanation of the effect of the defendant's frame of mind at the time of the homicide, where evidence shows that at the time of the offense the deceased did not in fact have the gun that defendant believed he possessed?

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UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

No. 15,661

CHARLES HENRY TURPIN, JR.,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Section 1291, Title 28, U. S. Code; and Rule 37, F. R. Cr. P.

STATEMENT OF THE CASE

In Criminal Action No. 802-59, Charles H. Turpin was charged in a single count indictment with first-degree murder. The case came on for trial on December 9, 1959; and on December 17, 1959 the jury returned a verdict of guilty of manslaughter. Subsequently, the appellant was sentenced under the Youth Correction Act, and the judgment and commitment filed.

It is from this verdict and judgment that appellant appeals.

The relevant facts are as follows:

At about midnight on August 13, 1959, one Luther Buckson was shot on the street in the 4800 block of Alabama Avenue, S.E., and shortly after removal to D.C. General Hospital he died. Cause of death was attributed to hemmorhage and shock from gun shot wounds from a .22 caliber firearm.

Appellant was arrested as a suspect at about 12:10 P.M. on Friday, August 14, 1959 at Benning Road and East Capitol Street, N.E., and taken directly to Number 14 Precinct — two blocks away — arriving there at about 12:20 (J.A. 26). Appellant was taken to the detectives' room, and from 12:20 - 12:30 P.M. until 5:45 P.M., was interrogated about the shooting by at least one, and sometimes more than one officer, before he made an incriminating statement at 5:46 P.M. This interrogation was continuous and uninterrupted for this entire period. At about 5:30 P.M. appellant asked for food, but was told none was available. Sixteen minutes later, after talking to his wife, who had been brought to the precinct, after being in police custody since about 11:00 A.M., appellant made oral admissions (J.A. 33-44). Appellant was arraigned at 11:00 P.M. in Municipal Court. Testimony was admitted as to the admissions over appellant's objection.

Police officers were on hand at the near midnight arraignment with the wife of the dead man — who could serve no legal purpose in this proceeding. Immediately after appellant was committed to the custody of the marshal the officers took Mrs. Buckson back into the cell-block to which the appellant had been committed. At the trial Mrs. Buckson was allowed to testify, over the objection of the appellant, to certain inculpatory statements made to her at that time (J.A. 10-14).

Evidence developed that on the fateful night the deceased was at an upstairs window when he observed some young men near his automobile which was parked on the street. At the time the deceased, then clad only in a pair of undershorts, rushed out into the street and fired a single shot from his .32 caliber pistol at the young men who were then running away. The testimony shows, and the prosecution concedes, that appellant was not among the youngsters who were at the car but had joined them a few seconds later while they were walking away from the automobile (J.A. 15). The evidence is clear that appellant had no knowledge of any wrong doing on the part of anyone. However, when the deceased shot at the entire group appellant ran for his life along with the rest of them. At the time appellant had in his possession a pistol which he was transporting from the apartment which he and his wife occupied to his parents' home about 3/4 of a mile away where he and his 8-month pregnant wife were staying temporarily. After running quite some distance appellant decided to resume his way home. While walking through the apartment development, and at a point a block away from the spot at which they had been shot at, the deceased, now fully clothed, jumped from the shadows of a parked car and threatened to kill appellant if he moved. According to the evidence, appellant, believing that the man still had his pistol and would shoot, pulled his own gun and fired several shots as he ran away from the deceased.

Shortly after the case was submitted to the jury for its deliberations its foreman requested that a map of the area which had been under discussion be furnished it so that the jury could determine the relative

locations of appellant's apartment, his parents' home, and the place where he had halted his flight when the deceased shot at the group. The Court expressed its desire to furnish such an exhibit and showed some agitation when counsel for appellant objected to such procedure. The Court informed counsel that it would explain to the jury that its very intelligent request could not be complied with because one of the counsel refused to consent to reopening the case for that purpose. Counsel requested that such an explanation not be given, and that it would suffice to simply tell the jury that only those items in evidence could be submitted for their inspection. This request was refused by the Court stating that it would not tell the jury which counsel had objected. However, immediately after the jury came in and took its place in the box counsel were called to the bench where the Court pointedly inquired of counsel for appellant as to why he objected to the introduction of the requested evidence. When the objection was still lodged counsel were directed back to their respective positions and then the Court told the jury why it could not have the exhibit. (J.A. 54-59).

After several hours of deliberation the jury in a note requested that the Court ". . . redefine or clarify the terms self-defense, excessive force and the significance of the defendant's frame of mind at the time of the commission of the crime in connection with self-defense and excessive force." In complying with the request the Court emphasized as a prerequisite to self-defense the existence of a real danger or actual necessity, and at no time mentioned that 'apparent necessity' might justify self-defense measures. When asked to elaborate within the framework of the jury's request, the Court refused (J.A. 59-61).

CONSTITUTIONAL AMENDMENT AND STATUTES INVOLVED

United States Constitution.

Fifth Amendment to the Constitution:

> No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

Rule 5 - Federal Rules of Criminal Procedure.

Rule 5. Proceedings before the Commissioner.

> (a) Appearance before the Commissioner. An Officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

SUMMARY OF ARGUMENT

The incriminating oral statements of appellant were inadmissible into evidence because they were obtained during a period of illegal detention; and those obtained immediately after arraignment were so inextricably tied in with those obtained prior to arraignment as to be part and parcel of the earlier one, and thus equally inadmissible.

Incalculable damage was done to the defendant when the Court told the jury that it could not have a requested exhibit because one of the counsel objected, after virtually designating such counsel at a bench conference.

The Court committed reversible error when it gave an incomplete and misleading instruction in answer to the jury's request for clarification on a specific matter.

ARGUMENT

I

It would seem that in the light of the law presently applicable in Federal jurisdictions the admission into evidence of appellant's pre-arraignment statement cannot be successfully supported. As a matter of fact, the facts and circumstances in this case present a classic example of precisely what the Courts sought to render impossible by the adoption of Rule 5 of the Federal Rules of Criminal Procedure. Uninterrupted interrogation over an extended period of time by relays of policemen has long been the best known and most potent aspect of the so-called "third degree". In outlining the aims and objectives of Rule 5 our highest Court in McNabb v. United States, 318 U.S. 332, said: ". . . it aims to avoid all the evil implications of secret interrogation of persons accused of crime". And again in Mallory v. United States, 354 U.S. 449, the Court speaks of intensive interrogation easily gliding into the evils of the 'third degree' during periods of unwarranted detention.

There is no room for argument that this delay between arrest and arraignment was for any other purpose than interrogation, inasmuch as the defendant was arrested at about noon on a week-day (Friday) when the working hours of the many committing magistrates in the District of Columbia were only half over.

Although the Court characterizes the lapse of time between arrest and arraignment in this case as ". . . not unreasonable, and therefore, not unnecessary . . . ". (J.A. 41), examination of all the opinions of this Court interpreting and applying the McNabb-Upshaw-Mallory principle reveals no support for this view.

It would appear that in the face of Jackson v. United States, (D.C. Cir. No. 15,292, decided December 19, 1959) the alleged statements to Mrs. Buckson made immediately after arraignment near midnight on August 14, 1959, cannot be accepted into evidence. To condone the admission of these statements into evidence one must ignore the clear import of this Court's own language in Jackson, supra, when it stated: "Jackson's signing of the document cannot in any way be considered an independent act based upon proper counsel or as occurring after time for deliberate reflection". It is appellant's contention that the statements in the instant case were obtained as a "result of a purposeful process of inquiry undertaken during a period of unlawful detention" in the same manner as Jackson's signature was so obtained. (See also Trilling v. United States, 104 U.S. App. D.C. 159, 260 F.2 677).

In this connection it is significant to note that in Jackson, supra, this Court made reference to both United States v. Bayer, 331 U.S. 582, 541, and Tyler v. United States, 90 U.S. App. D.C. 2, prefacing that reference with 'cf.' Obviously the Court discerned a factual distinction between the Jackson case and the cases cited of such legal significance that the proposition of law governing the respective situations must be materially different. Also this Court seems to say in Jackson, supra, that after obtaining an illegal confession in violation of Rule 5, before evidence of post-arraignment incriminating behavior can be admitted into evidence it must appear that the behavior is an independent act based upon proper counseling or that it occurred after time for deliberate reflection. Thus these carefully arranged episodes which are set up to take place while the spell of unburdening still prevails, and before counsel has been obtained, already have been stamped with disapproval by this Court.

The validity of the doctrine expressed in Jackson v. United States, supra, was recognized by this Court as late as March 17, 1960 in Goldsmith v. United States, (D.C. Cir. No. 15,280) when that case and Jackson, supra, were distinguished by the Court in footnote 6 on page 7 of the slip opinion.

II

The Court committed reversible error when, in answer to the jury's request for a map of the area it literally told the jury that its hands were tied by the unreasonable objection of counsel. Counsel objected to any explanation beyond a statement to the effect that such a map was not in existence. During the course of discussion before the jury was brought into the Courtroom the Court, apparently recognizing the impropriety of identifying the objecting counsel, promised that it would not say which counsel objected. However, for all practical purposes the Court pointed its finger at appellant's counsel and designated him as the objector when the following occurred:

> "(Whereupon the jury was brought into the Courtroom.)
>
> "THE COURT: Will counsel come to the bench?
>
> "(AT THE BENCH:)
>
> "THE COURT: Why do you object? Why put yourself in that position?
>
> "MR. BRYANT: I don't know. I'm scared. I don't know.
>
> "THE COURT: I wouldn't put myself in that position if I were defense counsel; however, it is your determination and your responsibility.
>
> "(IN OPEN COURT:)
>
> "THE COURT: Who is the foreman of the jury? Mr. Foreman, the Court has received your note reading as follows: 'The jurors desire to see a city map, streets of the locale of the crime, area to cover 48th and Alabama Avenue, Southeast, and also show the location of 221-47th Street, Northeast. Could marks be made to indicate deceased's home, defendant's parents' home, defendant's apartment, cemetery and location of body?' I think that is a very intelligent request, and I wish I were in a position to comply with it, because I have no doubt that it would be conducive to an intelligent and just consideration of the case. Unfortunately, the situation is this: neither side offered in evidence a map of the locale. They could have, but they did not see fit to do so. Perhaps they did not realize its desirability. That is probably the answer.

"Under the law, I cannot get you a map unless it is an exhibit in the case. The only way to make it an exhibit in the case would be for the Court to reopen the case for the purpose of having a map offered in evidence. Before I brought the jury in I laid the matter before counsel and one of the counsel, and I don't think I should identify which one, objects to the case being reopened for the purpose of offering a map in evidence and sending it to the jury. Under the circumstances I very much regret to say that I have no alternative but to ask you to continue your deliberations without the aid of the map. Under all the circumstances of the case I felt it would be appropriate for the Court to reopen the case provided both counsel consented, but one counsel refuses to consent. Thank you. You may resume your deliberations". (J.A. 54-59)

The Judge's remarks in the so-called bench conference were nearly as audible as were his subsequent remarks to the jury in open court, and no way to cure the harm done could be thought of at the time. It serves no purpose for the Court to tell a jury "I don't think I should tell you which counsel objects", and at the same time designate him in some equally effective manner. Appellate tribunals have long recognized that the influence of the trial judge on the jury is necessarily of great weight and that jurors are ever watchful of the words that fall from him. It is suggested to this Court that when defendant's counsel was presented to the jurors in the light of one determined to frustrate them in their efforts to properly deliberate, that he (the defendant) was deprived of a fair and impartial trial.

III

The Court's supplemental instruction in answer to the jury's request for clarification of (1) self-defense, (2) excessive force, and (3) the significance of the defendant's frame of mind at the time of the commission of the crime in connection with self-defense and excessive force, was inaccurate, incomplete and misleading in the light of the jury's request.

In the first place the Court's definition of self-defense confined itself to the existence of a real danger and necessity. It is axiomatic in the criminal law that the right to kill in self-defense is founded in necessity, real or apparent, and a Court's instruction which makes no mention of apparent danger or necessity as a basis for legitimately resorting to self-defense is error requiring reversal.

In addition, when the Court as to self-defense states:

> (a) "That one must be in real danger . . . he must be actually attacked or in real danger of being attacked, seriously attacked, then he has a right to protect himself. That is self-defense. That is fundamental . . . But he must be in real danger."

And as to the significance of the defendant's frame of mind, states:

> (b) ". . . in order to exercise his right of self-defense, the person must honestly think that he is in serious danger. That is the significance of his frame of mind but it isn't enough that he honestly thinks that he is in serious danger. His belief must be reasonable and not just caused by nervousness . . . there must be a reasonable basis for the belief he is in danger and in addition there must be the honest belief that he is in danger". (J.A. 59-61)

The instruction is misleading; and this should not be.

When the jury, desiring additional instruction, makes explicit its difficulties, the trial judge should clear them away with concrete accuracy. In enunciating this doctrine the Supreme Court in Bollenbach v. United States, 326 U.S. 607, emphasizes that error in a misleading specific instruction to the jury on a vital issue in a criminal case is reversible. In the circumstances of this case an accurate definition of self-defense and an accurate explanation of the defendant's frame of mind are not only vital issues in the case, but these elements constitute the very heart of the defendant's case.

When the Court refused to include the element of apparent necessity and failed to correlate its supplemental instruction to the specific request of the jury it committed error which deprived the defendant of a fair trial.

CONCLUSION

On the basis of the foregoing appellant respectfully submits that the Court below committed reversible errors, and thus its judgment should be reversed by this Court.

Respectfully submitted,

HOUSTON, WADDY, BRYANT & GARDNER

By: WILLIAM B. BRYANT
615 F Street, N.W.
Washington 4, D. C.

Attorney for Appellant

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JOINT APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	Criminal No. 802-59
	)	Grand Jury No. 1058-59
v.	)	First Degree Murder
	)	(22-2401 D.C. Code)
CHARLES H. TURPIN	)	

DOCKET ENTRIES

Date	Proceedings
1959	
Sept. 8	Presentment and indictment filed (1 Count); Copy of Indictment given to Deft. Cert. filed.
Sept. 11	INDICTMENT READ; ARRAIGNED, Plea NOT GUILTY entered; Defendant REMANDED to the District of Columbia Jail; APPEARANCE of William B. Bryant entered and filed; Attorney William B. Bryant present. PINE, J. (Reporter-Byrholdt) Cert. filed.
Sept. 22	TRANSCRIPT OF PROCEEDINGS, September 11, 1959, filed. Clerk's Copy. (Reporter-Byrholdt)
Sept. 29	ORAL MOTION of DEFENDANT to set bond heard and GRANTED; BOND SET by the Court in the sum of $7500.00; Attorney William B. Bryant present. PINE, C.J. (Reporter-Byrholdt) Cert. filed.
Oct. 1	RECOGNIZANCE in the sum of $7,500.00 taken with J.W. Carter, Surety, filed. (Taken in Police Court 9-29-59)
Oct. 9	CAPITAL LIST of indictment, witnesses and jurors served by the U.S. Marshal at the D.C. Jail on 10-9-59, filed.
Oct. 15	MOTION of DEFENDANT to suppress evidence and to return property, filed. Cert. of Serv.
Oct. 30	MOTION of DEFENDANT to suppress evidence and to return property heard and DENIED. Affidavit of Charles Henry Turpin, Jr., filed. Attorney William B. Bryant present. McGUIRE, J. (Reporter-Rawls) Cert. filed.

Date	Proceedings
Dec. 4	CAPITAL LIST of Jury and additional Witnesses served personally on Deft. at U.S. Marshal's Office on 12-3-59, filed.
Dec. 9	JURORS SWORN ON VOIR DIRE; JURY AND TWO ALTERNATE JURORS SWORN: * * * * * Case is RESPITED until tomorrow morning; Deft. ON BOND; Attorney William Bryant present. HOLTZOFF, J. (Reporter-Gore) Cert. filed.
Dec. 10	TRIAL RESUMED, same jury and alternate jurors; Case is RESPITED until tomorrow morning; Defendant ON BOND; Attorney William Bryant present. HOLTZOFF, J. (Reporter-Gore) Cert. filed.
Dec. 11	TRIAL RESUMED; same jury and alternate jurors; Case is RESPITED until December 16, 1959; Defendant permitted to REMAIN ON BOND; Attorney William Bryant present. HOLTZOFF, J. (Reporter-Gore) Cert. filed.
Dec. 16	TRIAL RESUMED; same jury and alternate jurors; Alternate jurors discharged; Accommodations for food for Jury and 2 Deputy U.S. Marshals; Jury excused to resume deliberations on December 17th, 1959; Attorney William Bryant present. HOLTZOFF, J. (Reporter-Gore) Cert. filed.
Dec. 17	TRIAL RESUMED; Jury resumes deliberation; Accommodations for food for Jury issued; Verdict: Guilty of Manslaughter; Jury POLLED; Case is REFERRED to the Probation Officer of the Court; Deft. COMMITTED to the District of Columbia Jail; Commitment issued; Attorney William Bryant present. HOLTZOFF, J. (Reporter-Gore) Cert. filed.
1960	
Jan. 29	NOTICE OF APPEAL FROM JUDGMENT, FILED. (Clerk's Fee $5.00 paid and credited to United States). RECOGNIZANCE on APPEAL in the sum of $5,000.00 taken with John W. Carter, Surety, filed.
Jan. 29	COMMITTED to the CUSTODY of the ATTORNEY GENERAL PURSUANT to SEC. 5010(b) of the YOUTH CORRECTION ACT. Defendant REMANDED to the District of Columbia Jail; APPEAL BOND SET in the sum of $5000.00. Attorney William B. Bryant present. HOLTZOFF, J. (Reporter-Byrholdt)
Feb. 1	Judgment and Commitment of 1-29-60, filed. HOLTZOFF, J.
Mar. 3	Transcript of Proceedings 1-29-60; filed; Clerk's Copy (Reporter-Byrholdt)

Date	Proceedings
Mar. 9	ORDER extending time for filing and docketing record on appeal TO and INCLUDING March 25, 1960, filed; Holtzoff, J. (N)
Mar. 25	ORDER extending time for filing record on appeal TO & INCLUDING April 6, 1960; filed; Holtzoff, J. (N)
Apr. 5	Transcript of Proceedings Vol. I, Pages 1-120 Dec. 9 & 10 '59; Vol. II, Pages 121-169 Dec. 16, 1959; Filed; (Clerk's & Atty's Copy) Gore-Reporter.

[Recv'd. August 17, 1959]

Commissioner's Docket No. 10

Case No. 337

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
Premises Apartment #3 4438 E Street, S.E. (entire apartment) Washington, D. C. Occupied by: Charles and Paulette Turpin.	)	SEARCH WARRANT

To: Chief of Police DC or any member of the MPDC.

Affidavit having been made before me by Det. Sgt. Peter M. Zazanis Homicide Sqd and Carlton L. Rogers, Det. #14 Pct. MPDC that he has reason to believe that on the premises known as apartment #3, 4438 E Street, S.E. (entire apartment), Washington in the District of Columbia, there is now being concealed certain property, namely, one 22 caliber revolver, and any other weapon used in or anything taken in the killing of Luther Buckson on August 13, 1959. The facts to sustain this are as set forth in the affidavit attached hereto and made a part hereof. Which are in violation of Title 22 DC Code Section 2401 - murder, and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the premises above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the place named for the property specified, serving this warrant and making the search in the daytime and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 14th day of August, 1959.

[SEAL] /s/ JAMES F. SPLAIN,
U. S. Commissioner

RETURN

I received the attached search warrant Aug. 14, 1959, and have executed it as follows:

On Aug. 14, 1959 at 4:30 o'clock P.M., I searched the premises described in the warrant and

I left a copy of the warrant with Paulette Turpin together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

1 - High Standard Mfg. Corp. Hamden, Conn., U.S.A.
Hi-Standard 22 Cal.

R-101 657-512 Sentinel

30 live cartridges, 22 caliber in cuff link box fd on dresser in bedroom.

9 empty cases found in waste basket in kitchen.

/s/ Det. Sgt. Peter M. Zazanis

This inventory was made in the presence of Det. Carlton L. Rogers and

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

_____

Subscribed and sworn to and returned before me this day of , 19 .

_____
United States Commissioner

Application for a United States Commissioner's search warrant for entire premises, apartment 3, 4438 E Street, S.E., Washington, D.C., occupied by Charles Henry Turpin and Paulette Turpin.

About 12:18 A.M., August 13th, 1959, Luther Buckson, colored, age 25 years was found, unconscious, lying on sidewalk in front of 4822 Alabama Avenue, S.E. He was pronounced dead 1:20 A.M., same date. This death being caused by gunshot wounds of chest from a .22 caliber revolver.

On reliable information that Charles Henry Turpin, male, colored, age 20 years, residence Apt. #3, 4438 E Street, S.E., Washington, D.C., was in the immediate vicinity at time of shooting and that he possessed a .22 caliber revolver, he was arrested in connection with this murder.

Paulette Turpin, female, colored, age 17 years, wife of Charles Henry Turpin, states that she is unable to account for her husband's whereabouts and actions at the time of the fatal shooting of Luther Buckson, but she does know that he has a .22 caliber revolver in their apartment, Apt. #3, 4438 E Street, S.E., Washington, D. C.

Therefore, we believe this to be probable cause for the issuance of a search warrant for these premises.

/s/ Det. Sgt. Peter M. Zazanis, MPDC

/s/ Det. Carlton L. Rogers, MPDC

Subscribed and sworn to before me this fourteenth day of August, 1959.

/s/ James F. Splain,
United States Commissioner, D.C.

[Filed September 8, 1959]

[INDICTMENT]

The Grand Jury charges:

On or about August 13, 1959, within the District of Columbia, Charles H. Turpin purposely and with deliberate and premeditated malice, murdered Luther Buckson by means of shooting him with a pistol.

* * *

/s/ Oliver Gasch,
Attorney of the United States
in and for the District of Columbia

[Filed May 5, 1960]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1 The above-named defendant came on for trial before the HONORABLE ALEXANDER HOLTZOFF, United States District Court Judge, and a jury at 2 o'clock p.m., December 9th, 1959.

APPEARANCES:

Victor Caputy, Esq.
Assistant United States Attorney

William B. Bryant, Esq.
On behalf of the Defendant

* * * *

3 CATHERINE BUCKSON

DIRECT EXAMINATION

BY MR. CAPUTY:

* * * *

Q. And where do you live? A. 4805 Alabama Avenue, Southeast.

4 Q. Were you living there on August 2nd and August 13th, 1959? A. Yes.

Q. And in the lifetime of one Luther Buckson, were you his wife? A. Yes.

Q. In August of 1959 were you living there with your husband? A. Yes.

Q. Was anyone else living there with you and your husband? A. My three children.

Q. Directing your attention to August 12th, 1959, was your husband home that evening? A. Yes.

Q. And incidentally, what did your husband do for a living? A. He was in the Air Force, a Staff Sergeant in the Air Force.

Q. In addition to that, can you tell us whether he had any other employment? A. Yes, he had a part-time job at Montgomery Ward.

Q. When would he work at that? A. He worked every evening.

Q. Now, directing your attention to August 12th, 1959, had your husband worked at his part-time job? A. Yes.

5 Q. What hours was he working in the evening? A. He would leave home about five in the evening and mostly he would come home around twelve and sometimes later.

Q. On August 12th, 1959, how late did your husband work at his part-time job. A. Well, he came home at 9:35.

Q. When he came home at 9:35 were you at home? A. Yes.

Q. And after he came home, what, if anything, did your husband do when he came home at 9:35 on August 12th? A. He sat down to watch boxing on T-V.

Q. Do you know what day of the week August 12th was, 1959? A. Wednesday.

Q. And do you know whether there was a boxing match on Wednesday, August 12th, 1959? A. Yes.

Q. Did you watch it? A. Half of it, because I was half asleep and half awake.

Q. Do you recall who fought on that day? A. No, I don't.

Q. Now, after the fight, what did your husband do, if anything, after that? A. After the fight I was sitting there half asleep and half awake and I recall the door slam, and after that, my little boy cried

6 Daddy, Daddy, and my husband came back for him. He went out to the trash. He came back in and he was in his shorts, so I said to him, "Did you go out that way?" And he said, Yes. He said, "Everyone is asleep this time of night."

Q. Now, by shorts do you mean undershorts? A. Yes.

Q. About what time was it that your husband went out in his undergarments? A. I didn't look at the clock.

Q. Now, did there come a time your husband came back? A. Yes.

Q. And what did he do, if anything, when he came back? A. He came back and said to me, "Let's go to bed." So he went to the window where we always keep the fan, taking the fan out of the window and sat it on the floor, and he saw someone out at his car. He ran out there and he came back in. He called the policeman.

Q. Now, when your husband went out to his car, how was he dressed on this occasion? A. He was dressed the same. He hadn't put on any clothes.

Q. And how long was your husband gone at the time he went out to his car? A. I think no more than two or three minutes.

Q. Did he return? A. Yes, he did.

7 Q. What did he do, if anything? A. He called the policeman.

Q. And after calling the police, did your husband remain at home? A. No, he went in my little boy's room and dressed.

Q. Did you see him dress? A. Yes, I did.

Q. And after he dressed, what did he do, if anything? A. He walked out.

Q. Now, at the time did you see him walk out? A. Yes.

* * * *

9 THE COURT: Well, ask her one question at a time.

Q. Where was it you saw the car? A. Out front, parked out front of the apartment.

Q. And what time was that? A. I should say maybe around 6:30 that morning.

Q. What was the condition of the car when you saw it at 6:30 in the morning? A. Well, all I saw was the vent glass broke.

Q. The vent glass? A. Yes.

Q. Now, coming back to August 12th, 1959, when your husband went out, what time did you go to bed? A. When my husband went out the last time, he went out and he told me to go to bed and not to wait up for him.

Q. Now, did there come a time after you had gone to bed that you were awakened? A. Yes.

Q. And about what time was it that you were awakened? A. I still didn't look at the clock.

Q. And by whom were you awakened? A. By the policemen.

10 Q. And did they come into your apartment? A. They didn't come in the first time.

Q. Did there come a time later on that the police entered your apartment? A. Yes.

Q. Can you tell us whether your husband owned a gun? A. Yes.

Q. And did he - where was the gun on August 12th, 1959? A. It was in the top chest drawer in our bedroom.

Q. At the time that your husband went out for the last time on August 12th, did he take the gun with him? A. No, he didn't.

Q. At the time the police came, after your husband had left, can you tell us whether they had gone into your bedroom? A. Will you repeat that?

Q. When the police came the second time, can you tell us whether the police went into the bedroom? A. Yes, he did.

Q. Now, can you tell me whether an enquiry was made by the police as to whether you had a gun in the house?

THE COURT: Will counsel please come to the bench?

(Discussion at the bench:)

THE COURT: Now, of course, counsel is not objecting to this and it may be that counsel is perfectly satisfied to have this go in, or maybe he doesn't want to object so as not to put himself in an embar-
11 rassing position, but this is all inadmissible.

MR. BRYANT: Your Honor is correct. I don't think it hurts me so much and I don't want to object.

THE COURT: You don't want to object, but of course, this is a capital case, and I think the Court has a duty to protect the defendant, unless the defense counsel prefers the evidence go in.

MR. BRYANT: If Your Honor please, I think this is actually giving the jury a full picture of all the circumstances.

THE COURT: Very well. It will go in then.

MR. BRYANT: Thank you.

THE COURT: As long as you are satisfied.

(In open Court:)

BY MR. CAPUTY:

Q. Were you asked about the gun by the police? A. Yes.

Q. And can you tell me whether they went into the drawer in the bedroom? A. I opened the drawer for them.

Q. And at the time you opened the drawer, was the gun in the drawer? A. Yes.

Q. Do you know one Charles H. Turpin? A. Do I know him?

Q. Do you know him now this person named Charles H. Turpin?

12 A. I know him now.

Q. Do you see him here in the courtroom? A. Yes.

Q. Would you point him out, please? A. He is sitting right there.

Q. Directing your attention to August 14th, 1959, can you tell us whether you were at Municipal Court that day? A. Yes.

Q. And can you tell us what time of the day it was that you were at Municipal Court. A. It was at night.

Q. About what time that night? A. I think around one, I think.

Q. Now, can you tell us whether you had seen the defendant Charles Turpin there at Municipal Court? A. Yes.

Q. Can you tell us whether you had any conversation with him? A. Yes.

Q. Will you tell the Court and the jury the circumstances under which you had the conversation with the defendant Turpin? A. Well, he--

MR. BRYANT: If your Honor please, I object to this.

THE COURT: Well, this is preliminary. This question so far

13 does not call for the contents of the conversation; it only calls for circumstances. Now, if there is any objection to the contents of the conversation, if that question is asked, then you may note an objection and I shall rule on it.

MR. CAPUTY: Will the reporter read the question?

(The pending question was read by the reporter.)

A. I walked in and he was sitting there and I guess--

Q. Let me ask you this question first: at the time you had the conversation, can you tell me whether that conversation was before or

after the defendant Turpin was before the Judge?

MR. BRYANT: I will stipulate to that.

THE COURT: State the stipulation, please.

MR. BRYANT: I will stipulate that the conversation referred to was after Turpin had been before the Judge in Municipal Court.

THE COURT: Very well.

Q. Now, will you tell us what, if anything, that conversation was about.

MR. BRYANT: If your Honor please, may the stipulation include the fact that he had been before the Judge a matter of minutes, just a few minutes.

THE COURT: Are you willing to accept that stipulation?

MR. CAPUTY: I don't know how long he was there, if your Honor please.

THE COURT: Well, I don't think it makes any difference
14 whether it was five minutes or five hours.

MR. BRYANT: Well, if your Honor please, I would like to spare the witness and stipulate. If we can't approximate the time--

THE COURT: What is your contention?

MR. BRYANT: May we come to the bench?

THE COURT: Yes, indeed. Well, I think if you are going to stipulate you might as well state in open court what you are willing to stipulate. Otherwise we will have to go through it twice.

MR. BRYANT: Counsel for the defendant is willing to stipulate that shortly after the defendant's arraignment before Judge Scalley, and that within, let's say a half an hour, and in the cell block immediately in the rear of the court, that that is the place where this conversation occurred. When I say a half an hour, your Honor, I believe that would cover the period.

THE COURT: Very well. Is that agreeable to you?

MR. CAPUTY: Yes, your Honor.

THE COURT: Very well. There is a pending question. The reporter will read the question.

(The reporter read the pending question.)

MR. BRYANT: I object to that.

THE COURT: Will you come to the bench, please.

(At the bench:)

THE COURT: The objection is overruled on the ground that

15 the rule of the Mallory case only applies to statements made before the prisoner is brought before a magistrate. This statement was made after he was brought before the magistrate. Secondly, the rule of the Mallory case only applies to statements made to a Government officer. It does not apply to statements made to a third person. The purpose of the Mallory rule, the rule of the Mallory case, is to penalize the public for a default on the part of the Government officer in not bringing the defendant before a magistrate with sufficient promptness. It does not apply to statements made to third persons. For both reasons, I shall overrule the objection. I thought I should state my ground in full.

MR. BRYANT: I am not relying upon the Mallory decision, your Honor.

THE COURT: What other ground do you rely on?

MR. BRYANT: It would seem to me that in the Trilling case, which is in our 104 Appeals, it seems to me that case rules out this type of thing.

THE COURT: The Trilling case had no majority opinion and I am not going to follow it. The conviction was reversed, but no five judges agreed upon the grounds for the reversal. And in the Trilling case the statement was made to an officer anyway.

MR. BRYANT: And also to some owners of property.

THE COURT: I think I shall ignore the opinions of the Trilling case, because no five judges agreed on any one opinion. And so every-

16 thing in the Trilling case is dicta. All they agreed on was the judgment that they rendered. It just doesn't make sense. The purpose of the rule of the Mallory case, as I say, is to implement rule 5 of the Federal Rules of Criminal Procedure, and to impose a penalty on the

public if their officers do not comply with the rule.

(In open court:)

The objection is overruled and the witness may state the nature of the conversation she had with the defendant.

THE WITNESS: He said to me, "Mrs. Buckson, I am sorry I shot your husband. I am sorry."

Q. Did he say anything else? A. "I didn't intend for it to be that way."

Q. Was anything else said by him? A. That is all I recall.

Q. Is your recollection exhausted? Is your memory exhausted? A. For when he was talking to me?

Q. Yes, as to what he said? A. Yes.

THE COURT: You have a right to ask a leading question.

MR. BRYANT: I have no objection to his refreshing her recollection, without going through the preliminaries.

THE COURT: You have a right to ask, "Did you also say so and so."

17 MR. BRYANT: May I see the statement?

THE COURT: Yes, of course.

(A statement is handed to Mr. Bryant.)

THE COURT: You are very cooperative and I think you ought to be allowed to see it.

MR. CAPUTY: Would you indulge me, your Honor please?

MR. BRYANT: On second thought I would be content to take a look at it after he examines the witness. I won't interrupt counsel.

THE COURT: After the witness has exhausted her memory, you have a right to ask a leading question, so proceed.

Q. Did he also say at that time, when you talked to him, "He was in his shorts and there was a group of teenagers on the corner and they must have been the ones hanging around his car?" A. Yes, he said that.

Q. Did he also say, "Your husband went back into the house and he came out dressed?" A. Yes.

Q. And did he also say, "He came up the street where we were talking and we had some words?" A. Yes.

Q. And did he also say, "I thought he still had the gun, so I shot him?" A. Yes.

Q. And did he also say, "I don't know how many shots I fired;

18 I just turned in loose? A. Yes.

Q. Did he say, "I am sorry. I didn't intend it to happen like this?" A. Yes.

* * * *

20 The above-named defendant came on for trial before the HONORABLE ALEXANDER HOLTZOFF, United States District Court Judge, and a jury at 10:00 o'clock a.m., December 10, 1959.

* * * *

21 ERNESTINE BARBOUR

DIRECT EXAMINATION

BY MR. CAPUTY:

* * * *

Q. Where do you live? A. 4902 Alabama Avenue, Southeast.

Q. Were you living at 4902 Alabama Avenue, Southeast, on August 12th, 1959? A. Yes, I was.

Q. Now, directing your attention to August 12th, 1959, do you recall that day, the day of the Archie Moore fight? A. Yes.

Q. And after the fight, can you tell us where you were? A. I was on G Street in the 4300 block of G Street, Southeast, 4309.

Q. After the fight, where, if anywhere did you go? A. After the fight, we just chatted around with this lady and her daughter and what not. Then we left and came home.

22 Q. Where was that? A. On E Street is where we parked the car. I'm on Alabama at 4902.

Q. E Street is where you parked the car? A. I parked the car on E Street near the 4800 block of Alabama Avenue.

Q. Do you recall about what time it was you parked the car on E Street near Alabama Avenue? A. No, I don't know the time.

* * * *

Q. Now, when you parked the car, did you go in the house, or did you stay in the car for a while? A. No, I didn't go directly in the house. I sat there in the car for a while.

23 Q. How long were you in the car? A. I guess about ten minutes, at the most.

Q. Now, as you were in the car about ten minutes, did you see anyone or observe anything? A. Well, during that time a car came up and parked on the opposite side of the street. I would say about fifty feet from where we were parked and three men got out of the car.

Q. And did you see where they went, if anywhere? A. Well, two walked in the middle of the street and the third one walked along the curbline and went around the 4800 block of Alabama Avenue.

Q. Did there come a time then that you went into the house? A. Yes, I did, I went into the house after that.

Q. Now, what time did you go to sleep? A. Well, I sat and talked with my daughter concerning the fight, and about Mary's dog chewing chewing-gum. I don't know what time it was but during the course of the time I was talking with her I heard these three shots.

Q. Were you talking with your daughter? A. Yes.

Q. As you were talking with her, can you tell us whether you heard anything unusual? A. Well, I heard these three shots.

24 Q. After you heard the three shots, had you done anything? A. No, I hadn't done anything. My daughter said they sounded like --

Q. Don't tell us what your daughter said. Did there come a time that you looked out the window? A. Well, when I was getting ready for bed--

Q. When you looked out the window, can you tell us what, if anything, you saw? A. Well, I saw this same car pull off.

Q. Fast or slow? A. Well, really, I couldn't say. I know the motor started up during the course of me kneeling there by the window saying my prayers, and I just saw it pull off. I don't know.

* * * *

27 THE COURT: Mr. Caputy, does the Court correctly understand that there is no claim on the part of the Government that this defendant was one of the three men whom this witness saw?

MR. CAPUTY: That's correct. He was not.

THE COURT: You do not claim that the defendant was one of the three?

MR. CAPUTY: That is correct.

* * *

EDGAR RUDOLPH JOHNSON

DIRECT EXAMINATION

BY MR. CAPUTY:

* * * *

28 Q. Directing your attention to that date, late in the evening of August 12th, 1959, after 11:00 o'clock, where were you? A. After 11:00 o'clock?

Q. Yes. A. I was with two friends of mine.

Q. What were their names? A. Diggs and Oliver.

Q. When you were with your two friends, did there come a time you were around Alabama Avenue, Southeast? A. Yes, sir.

Q. And about what time were you on Alabama Street, Southeast? A. I don't recall the time but it was after eleven.

Q. After 11:00 p.m.? A. Yes.

Q. Was it before twelve o'clock? A. I am not sure. I don't recall the time.

Q. Whereabouts on Alabama Avenue, Southeast, were you with these two friends? A. You mean which hundred block?

Q. Yes. A. I don't know.

29 Q. How did you get to Alabama Avenue, Southeast, with your friends Diggs and Oliver? A. We went in Oliver's car.

Q. Where did you park, if anywhere? A. We parked on the street right off Alabama Avenue.

Q. Would that be E Street that you parked on? A. Yes, sir.

Q. And can you tell us what your purpose was for going on Alabama Avenue, Southeast?

* * * *

A. Well, our first intention was of going over a friend's house, but after we went out that way, we decided we weren't going over to his house, because it was late. So, the question came up about some fender skirts.

Q. What do you mean, the question came up about some fender skirts? A. Well, we decided that we would get some fender skirts.

Q. Where did you decide to get them from? A. Well, no particular place. We didn't see any at the time.

30 Q. From some automobiles? A. Yes.

Q. Now, after you parked your car, where did you and your two friends go? Did you walk? A. Yes, we walked down Alabama Avenue.

Q. Did you walk together or separately? A. Together.

Q. On the sidewalk or in the street? A. Well, we came across the street on to the sidewalk.

Q. Now, in your own words, tell us what, if anything, happened as you and your friends were walking up Alabama Avenue, Southeast? A. Well, we saw a lady and a man in a car, and then we just kept on walking.

Q. You just kept on walking when you saw them, and then what happened then, if anything? A. Well, we saw a car so we decided we were going to see if it had any skirts, but it didn't have any, so we were on, I think, on the lefthand side of the street, so when we got down to the corner, we turned around and started back, and we were coming back to the car getting ready to go home, and as we were going home, a friend came up the street, was coming around the corner.

Q. And do you know that friend's name? Is that the defendant

31 Turpin? A. Yes, sir.

Q. Do you see Turpin here? Is he the one--stand up--is that the friend? A. Yes, sir.

Q. All right, so, when Turpin--

THE COURT: Do you want the record to--

MR. CAPUTY: May the record show that the witness has identified the defendant Turpin as the friend who came up the street?

THE COURT: Let the record so show.

Q. Now, when the defendant Turpin came up the street, did you have any conversation? A. Yes, sir.

Q. Tell us about it. A. Well, when we first saw him, we didn't know who he was, and he called out to Oliver, but Oliver didn't answer because we still didn't know who he was. Then he came across the street

on the other side where we were, so we started talking.

Q. All right. Then what happened? What did you talk about? A. Nothing in particular. We were just joking.

Q. Where were you standing at that time when you were talking with your two friends and the defendant Turpin who came up?

32 A. Across the street.

Q. Alabama Avenue? A. Yes.

Q. Now, as you were talking on Alabama Avenue, when Turpin came up, did you have an opportunity to observe him, his clothing? A. Yes, sir.

Q. Did you notice anything about Turpin's clothing when you talked to him? A. You mean the color of his clothes?

Q. Did he have anything with him that you saw? A. He had a gun.

Q. Tell us about the gun.

THE COURT: No, ask questions specifically.

Q. Where did he have the gun? A. In his belt.

Q. Did you see it or was it shown to you by Turpin? A. You mean did he show it-

Q. Yes. A. He showed it to me. I don't know if the others saw it or not. I saw it.

Q. What did you say? A. He showed it to me.

Q. As you were all talking there, will you tell us what happened,

33 if anything, as you were all standing there? A. As we were all standing there on the other side of the street, someone said, "Here comes a man." So we looked around and a man came out of the house with his underwear on, and when I saw him--well, I seen him fire the shot, so we all started running.

Q. The four of you? A. Yes.

Q. Where did you run to? A. We ran back up the street in the direction of the car, but didn't any of us stop. We all ran past the car and I don't know who was with me, but I ran down the hill near a graveyard, I think.

Q. Did there come a time you stopped running? A. Yes, sir.

Q. And when you stopped running, can you tell us whether you had seen the defendant Turpin? A. Yes, I saw Turpin and Oliver.

Q. Where was it that you saw Turpin and Oliver when you stopped running? A. They were behind me. They were coming in the same direction I ran.

Q. About how far did you run? A. About two blocks, I would guess.

34 Q. When you saw Turpin and Oliver behind you, did you all stop? A. Yes, sir.

Q. And did you stay there, or what, if anything, happened? A. Well, we stayed there a while.

Q. How long do you mean by a "while?" A. I don't know. I'm not sure.

Q. Approximately? A. Well, I was kind of tired, so I was completely rested after we stayed there a while.

Q. Was anything said by Turpin when you were all stopped there and rested? A. No. Oliver said he had to go get his car, and Turpin said he was going home.

Q. You say that Turpin said he was going home? A. Yes.

Q. And did he leave you?

What did he do? A. Well, we all went down the hill to Texas Avenue and Turpin went up the hill by hisself. He went about--he went ahead of Oliver and I by hisself, and then I stayed down there and waited while Oliver went to get his car.

Q. Did Oliver return with his car? A. Yes, he did.

35 Q. Prior to the time that Oliver returned with his car, did you hear anything? A. While Oliver was gone?

Q. Yes, and while Turpin was gone? A. Yes, I heard some shots.

Q. About how many shots did you hear? A. About four.

Q. About how much time passed from the time that Turpin left you to the time you heard the shots? A. Oh, about five minutes, I guess.

Q. Did you see Turpin after that? A. No, I didn't.

* * * *

38 LEE M. FISHER

DIRECT EXAMINATION

BY MR. CAPUTY:

* * * *

Q. Where do you live? A. 4814 Alabama Avenue, Southeast.

39 Q. Are you a member of the Metropolitan Police Department? A. Yes, sir, I am.

Q. Now, were you living there on Alabama Avenue, Southeast, on August 12th and 13th of 1959? A. Yes, sir, I was.

Q. Now, directing your attention, sir, to about twelve o'clock midnight of August 12th, to the early hours of August the 13th, were you home? A. Yes, sir.

Q. And what, if anything, were you doing at that time when you were at home? A. I was laying across my bed.

Q. Now, how were you attired as you were laying across the bed? Did you have on night clothes or street clothes? A. Well, I had on a shirt and pair of pajamas.

Q. As you were lying across the bed, will you tell us whether you heard anything unusual, if you heard anything? A. Yes, I heard what sounded like a shot. Then a short interval followed, and then five more shots.

Q. Now, when you say short interval, and then followed by five more shots, how much time was there in that short interval, between the first shot and the other five shots? A. I would say a few seconds.

Q. Now, when you heard that, will you tell us, if anything, that you did? A. I sat up in bed and looked out of my window to see what

40 had caused the shot, and the noise that I heard. Then I saw a man bending over a figure and then I got up, dressed and went downstairs to see what had happened.

THE COURT: Would you repeat your last answer.

THE WITNESS: I sat up in bed and looked out of my window.

Then I saw a man leaning over a figure. I slipped on my trousers.

THE COURT: You saw a man doing what?

THE WITNESS: Bending over a figure.

Q. How many times had you looked out the window? A. That was the second time I had looked out.

Q. The first time, had you seen anything when you looked out the window the first time? A. No, sir.

Q. Did there come a time you looked out the window the second time? A. Yes.

Q. What, if anything, caused you to look out the window the second time? Did you hear anything in addition to the five shots? A. No, I didn't.

Q. Well, specifically, did you hear anyone calling or asking for help? A. Well, after the shot and the short interval, I heard some-
41 one yell Help, Help, twice.

Q. And then what did you do? A. That is when I dressed and went downstairs.

Q. When you dressed and went downstairs, will you tell us what, if anything, you saw? A. Yes. When I went downstairs, there was a man laying on the street, out on the sidewalk. As I approached the man I observed what--a couple bullet wounds on the right side of his chest, and I kneeled and asked him if he knew who shot him. He didn't reply. I asked him the second time. He asked if anyone had called an ambulance and I told him yes, that someone had already called the ambulance. I asked him again if he knew who had shot him. At this time his eyes became sort of glassy. Looked like he was going into a state of shock.

Q. Can you tell us whether you had an opportunity to observe this person's hands? A. Yes, I did.

Q. Did he have any weapons in his hands? A. No, sir.

Q. Any weapon of any kind? A. No, sir.

Q. Were there any weapons lying around him? A. No, sir.

42 Q. Of any kind? A. No, sir.

Q. Have you since learned who that person was that you saw lying there? A. Yes.

Q. Who? A. Sergeant Buckson.

* * * *

43 LIONEL COUTURE

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. State your name, your assignment, sir. A. Lionel Couture, Detective Sergeant attached to the Homicide Squad of the Metropolitan Police Department.

44 Q. How long have you been attached to the Homicide Squad of the Metropolitan Police Department? A. Twelve years.

Q. Now, directing your attention to August 13th, 1959, were you working, sir? A. I was.

Q. Shortly after midnight on August 13th, 1959, will you tell where, if any where, you were? A. Yes, sir. At twelve-thirty in the morning I was at D.C. General Hospital emergency room.

Q. And at D.C. General Hospital did you see any patient there? A. I did.

Q. And do you know what the name of that person was? A. I didn't at the time, but later he was identified to me.

Q. And what was his name? A. Luther Buckson.

Q. Now, will you tell us what, if anything, you observed about that person as you saw him in the emergency room at D.C. General Hospital? A. I saw the ambulance bring him in and they put him on a table in one of the examining rooms, and then I walked up to him and I could see where he had been shot, that is, had two bullet wounds--

* * * *

45 Q. What else did you observe, if anything? A. Well, the man's eyes were open. I attempted to question the man, but he could not answer, and he was struggling, and I was attempting to hold his head

46 while the doctors were working on him. While that was happening he coughed one time and he spit up a slug, a .22 calibre slug. A

few minutes later he spit up another one. I marked those slugs with an "x" and took them in my possession.

Q. As this person was in the hospital, can you tell us whether you made a search of his clothing? A. I did. He was dressed in a white tee shirt and he had on a pair of trousers and a pair of shoes. I examined his clothing and my purpose at that time was to see who he was. I didn't have any identification on him yet. And that was my purpose for the search, but he didn't have anything on his person at all.

Q. Will you tell us about the search? What did you find? A. I searched his pockets, the pockets of his trousers.

Q. You searched all his pockets? A. Yes.

Q. Did he have any weapons of any kind on him? A. No, sir.

Q. Did there come a time that you left the hospital? A. Yes, sir, I left about ten minutes to one. I left and I drove to the 4800 block of Alabama Avenue, Southeast.

Q. Now, on Alabama Avenue, Southeast, can you tell us whether
47 you conducted a search of that block?

* * * *

Q. Now, what, if anything, did you do in the 4800 block of Alabama Avenue, Southeast? A. Well, I instituted a search of that entire block. There were several uniformed police, a lieutenant from Number 14 on the scene with flashlights, and we walked up and down either side of the road, the sidewalks, the lawns, in search of anything that might give us a lead as to what happened to the gentleman that was shot.

Q. Did you find any weapons, guns or weapons? A. No, sir, we did not.

Q. Can you tell us where, if anywhere, you had gone after that search? Did you go anywhere else? A. Yes, I went to 4805 Alabama
48 Avenue to the home of Mr. Buckson.

* * * *

49 Q. Now, I show you what has been marked as Government's Exhibit Number 3 for identification and ask to examine it and tell us what it is? A. Yes, sir. That is a .32 calibre Smith and Weston revolver.

Q. When was it you had first seen Government's Exhibit 3 for identification? A. I saw that for the first time in the top drawer in the bedroom at 4805 Alabama Avenue. It was in a bureau drawer. And the time I saw it was about 1:30 a.m. on the morning of August 13th.

50 THE COURT: Bring out whose premises these were.

Q. Whose premises were these? A. The premises of Mr. Buckson.

Q. Now, at the time you saw Government's Exhibit Number 3 for identification, did it have any cartridges in it? A. Yes, sir. It had six rounds of ammunition in the cylinder. One round had been fired. There were five live and one expended.

Q. Will you examine the contents of Government's Exhibit Number 3 for identification further and tell us whether the live cartridges and expended one are in the envelope?

THE COURT: I am going to ask counsel to come to the bench a moment.

(AT THE BENCH:)

THE COURT: Mr. Caputy, I do not follow this. Probably the fault is mine, but what bearing does it have on this case that the deceased had a revolver in a bureau drawer of his bedroom?

MR. CAPUTY: There was evidence, if your Honor please, that one shot was fired by the deceased.

THE COURT: I see. I think that is proper.

* * * *

57 PRIVATE ROBERT E. ELLIS

58 DIRECT EXAMINATION

BY MR. CAPUTY:

* * * *

Q. Are you a member of the Metropolitan Police Department in the District of Columbia? A. Yes, sir, I am.

Q. And were you a member of the Metropolitan Police Department in the District of Columbia on August 13th, 1959? A. Yes, sir, I was.

Q. Were you working on August 13th, 1959? A. Yes, sir, I was.

Q. What was your shift of duty? A. I was working the midnight to eight a.m. tour of duty.

Q. And in what capacity, as foot patrol or scout car? A. I was assigned to Scout 141 in the 14th Precinct.

Q. Were you working with any other officer? A. Yes, sir, I was.

Q. With whom were you working? A. Private William Troske.

Q. Directing your attention to August 13th, 1959, during the course of your shift of duty, did you respond to the 4800 block of Alabama Avenue, Southeast? A. Yes, sir, we did.

59 Q. About what time did you respond? A. We received a run at 12:18 in the morning.

Q. And what time did you get there? A. It was approximately two minutes after that.

Q. Now, will you tell us what, if anything, you saw when you responded to the 4800 block of Alabama Avenue, Southeast? A. We responded to the 4800 block of Alabama Avenue, Southeast, and there was a group of people gathered on the sidewalk in front of 4822 Alabama Avenue, and lying down on the sidewalk was a man.

Q. What was his condition, sir? A. He was lying down sort of holding his stomach on the sidewalk.

Q. Did you observe anything about him, sir? A. Yes, sir, on his tee shirt there was what looked like blood in different spots on his tee shirt.

Q. Did you have an opportunity to observe his hands? A. Yes, sir.

Q. Can you tell us whether this person whom you had seen lying down, whether he had any weapons of any kind in his hands? A. No, sir, he didn't.

Q. Can you tell us whether there were any weapons around where he was lying? A. No, sir, there wasn't.

60 Q. Now, directing your attention to August 14th, 1959, did you make an arrest of anyone? A. Yes, sir, I did.

Q. And whom did you arrest? A. The defendant Charles Turpin.

Q. Do you see him in the courtroom? A. Yes, sir.

Q. Would you point him out? A. That's him there in the brown suit.

MR. CAPUTY: May the record show, if your Honor please, the witness has pointed to the defendant Turpin as the person whom he arrested.

THE COURT: The record may so show.

Q. Where, and at what time, did you arrest him, sir? A. It was approximately 12:10 p.m. at Turpin's place of employment at the Esso Service Station at Benning and East Capitol Streets.

Q. Where, if any where, did you take him after the arrest? A. We took him to Number 14 Precinct.

Q. And what time did you arrive at Number 14 Precinct? A. Just a few minutes after - it was just a little after twenty minutes after twelve, I would say.

MR. CAPUTY: No further questions.

* * * *

61 DETECTIVE SERGEANT PETER M. ZAZANIS

DIRECT EXAMINATION

BY MR. CAPUTY:

* * * *

Q. Of the Metropolitan Police Department in the District of Columbia? A. Yes, sir.

Q. Were you a member of the Metropolitan Police Department on August 14th, 1959? A. I was.

Q. That was 1959? A. That's correct.

* * * *

62 Q. I show you what has been marked as Government's Exhibit 5 for identification. I ask you to examine it and tell us what it is, sir?

A. This is a .22 calibre high standard revolver.

Q. Can you identify it, sir? When was it you first saw Government's Exhibit Number 5 for identification?

MR. BRYANT: Your Honor, may we come to the bench?

THE COURT: Yes.

(AT THE BENCH:)

MR. BRYANT: If your Honor please, for the record I would like to interpose an objection to the testimony about this gun. This is the gun which was taken from--

THE COURT: Just a moment. Aren't you a bit premature? You cannot object to a line of testimony generally; you have to object to a specific question. The question now is where did he first see the gun. Now, why is that objectionable? That might be a preliminary question.

MR. BRYANT: He is going to say in Turpin's apartment.

THE COURT: Oh, I see. Well, is that the answer you expect?

63 MR. CAPUTY: Yes. Might I say, if your Honor please, that we did have a motion to suppress argued and it was denied on this matter.

THE COURT: Very well. Do you renew your objection.

MR. BRYANT: Yes, but I should inform your Honor of this, at that time Judge McGuire reached his determination on the basis of not a full argument. He reached his determination on the basis of the fact that the defendant's wife had volunteered to let him go into the apartment and search.

THE COURT: Just a moment, Mr. Bryant. It is my view of the law that no matter how full a hearing may be, the ruling on such a motion is binding on the trial judge and precludes the trial judge from reopening it.

MR. BRYANT: Well, your Honor, may I say this: that at the time -

THE COURT: Suppose you tell me the nature of your objection.

MR. BRYANT: My objection is this: the gun was taken out of

the apartment pursuant to a search warrant. As a matter of fact, the Officers had been in the apartment prior to getting the search warrant and had seen and examined the gun. When they went to get the search warrant they didn't say anything about that. They said something about some reliable information, but they didn't indicate that they had already searched the premises.

64 My view, of course, is that the search warrant which let them take the gun had information in it and the affidavit was pursuant to information which had been illegally obtained.

THE COURT: I am going to adhere to Judge McGuire's ruling because I don't think the question is open. You have made your record, Mr. Bryant.

MR. BRYANT: Yes, sir.

(IN OPEN COURT:)

THE COURT: You may proceed.

* * * *

65 BY MR. CAPUTY:

Q. Now, on August 14th, 1959, did you have a search warrant for the premises 4438 E Street, Southeast? A. I did.

Q. And did you enter the premises pursuant to the search warrant? A. I did.

Q. With whom, if anyone, did you enter the premises? A. Detective Rogers of Number 14 Precinct and Mrs. Turpin.

Q. The defendant's wife? A. Yes.

Q. And Government's Exhibit Number 5 for identification, where did you see it the first time? A. In the apartment bedroom of Apartment 3 of premises 4438 E Street, Southeast.

Q. Now, at the time you saw Government's Exhibit Number 5 for identification at the apartment of the defendant, on August 14th--

THE COURT: You have left out a link, I believe. Did he see it at the time of the search, pursuant to the search warrant?

66 Q. Did you see it at that time, when you entered pursuant to the search warrant? A. Yes, sir.

Q. And at the time you saw it, did it have anything in the chamber? A. No, sir.

Q. Now, I show you what has been marked as Government's Exhibit Number 6 for identification and ask you to examine the contents and tell us what they are. Can you tell us what they are? A. Yes, sir. These are 30 live .22 calibre cartridges which were found on the dresser in the bedroom.

Q. Were they found pursuant to your entrance with a search warrant? A. Yes, sir.

Q. Anything else? A. Yes, sir, there's five empty cartridges of .22 calibre, which we found also in the bedroom in the waste paper basket, pursuant to the search warrant.

Q. Did you find anything else? A. That was all on that search.

Q. Did you say five empty cartridges? A. Nine.

Q. Nine. What, if anything, did you do with Government's Exhibit 5 for identification after you recovered it from the premises at

67 4438 E Street, Southeast, pursuant to a search warrant.

A. They were taken to police headquarters, the Office of the Homicide Squad, placed in these two boxes and marked for purposes of identification and then taken to the Federal Bureau of Investigation and turned over for ballastics examination.

Q. To an agent Frazier? A. Yes, sir.

Q. Does that apply to Government's Exhibit Number 6 for identification, the expended and the live cartridges? A. Yes, sir.

Q. Have they been returned to you from the Federal Bureau of Investigation? A. They were.

Q. When? Do you recall? A. I interpreted you as meaning the Police Department.

Q. Yes, when was that? A. On the 17th.

Q. And when did you turn them over to Agent Frazier? A. On the evening of the 14th.

Q. Are Government's Exhibit Number 5 and 6 for identification substantially in the same condition today as they were at the time that

you recovered them in the defendant's apartment? A. Yes, sir, they are.

* * * *

68 CROSS EXAMINATION

BY MR. BRYANT:

* * * *

69 Q. I believe my question was whether or not you knew or had knowledge of the fact that some other officer had been in there prior to the time you went in with search warrant? A. I had knowledge.

Q. You had such knowledge? A. Yes, sir.

MR. BRYANT: That is all I have.

(The witness was excused.)

70 Thereupon

EDWARD A. DAILY

DIRECT EXAMINATION

BY MR. CAPUTY:

* * * *

Q. And are you a lieutenant with the Metropolitan Police Department? A. A lieutenant attached to the Homicide Squad.

Q. Were you a member of the Metropolitan Police Department on August 13th and 14th, 1959? A. Yes, sir.

Q. I show you what has been marked as Government's Exhibit 3 for identification and ask you to examinine the contents and tell us what it is. A. This is a .32 calibre revolver. These are five .32 calibre cartridges. This is one .32 calibre shell.

Q. Expended bullet? A. Yes, expended cartridge.

Q. When was it that you saw Government's Exhibit Number 3 for identification the first time? A. I saw this .32 calibre revolver in

71 the top bureau drawer at Mr. Buckson's home on August 15th.

Q. Do you recall where that was? A. The address?

Q. Yes. A. I believe it was 4838 Alabama Avenue, I believe.

Q. 4805, would it be? A. 4805 Alabama Avenue, yes.

Q. Now, at the time you saw Government's Exhibit 3 for

identification, were the chambers empty in Government's Exhibit 3? A. No, sir, the chambers contained five live cartridges and one expended cartridge.

Q. What, if anything, did you do with Government's Exhibit Number 3 for identification, the gun and expended shell and the live cartridges, from the time you recovered them? A. Well, this gun I asked Mrs. Buckson whose it was and she said it belonged to her husband. I asked her if I could take it, that I wanted to have it examined in the laboratory. She gave her permission and on August the 17th I took it to the FBI laboratory for examination.

Q. And has it been returned to the Police Department? A. Yes, sir.

Q. Did you also take the expended shell and the live cartridges
72 to the FBI? A. I did, sir.

* * * *

73 Q. Directing your attention to August 14th, 1959, were you at Municipal Court that day? A. Yes, sir, I was.

Q. And what time of the day? A. I was in Municipal Court about ten o'clock or 10:00 p.m.

Q. Now, at Municipal Court, were you at any time in the cell block behind the Court there, sir? A. I was, yes.

Q. About what time were you in the cell block, sir? A. Approximately 11:30.

Q. And at the time that you were in the cell block was anyone with you? A. Yes, sir.

Q. Who was with you? A. Mrs. Buckson, Detective Chaplin of the 14th Precinct and the Defendant.

Q. Do you see that defendant, that person you term as the de-
74 fendant here in the courtroom? A. Yes, sir.

Q. Would you point him out? A. Sitting beside his attorney there.

MR. CAPUTY: May the record so show, your Honor, that the witness has seen the defendant in the cell block in Municipal Court on

August 14th at about 11:30?

THE COURT: The record may so show.

Q. At the time you saw the defendant at Municipal Court in the cell block at about 11:30 on August 14th, can you tell us whether it was before or after a preliminary hearing or an arraignment?

A. It was immediately after the arraignment.

THE COURT: After whose arraignment?

THE WITNESS: After Turpin's arraignment.

Q. After the defendant's arraignment? A. Yes.

Q. On August 14th? A. Yes.

Q. Now, can you tell us whether there was any conversation between the defendant and Mrs. Buckson at that time? A. There was, yes, sir.

Q. Now, will you tell us what the defendant said and what Mrs. Buckson said on this occasion?

75 MR. BRYANT: If your Honor please, may I have the same objection?

THE COURT: Yes, and the same ruling.

THE WITNESS: Mrs. Buckson entered the cell block with me, and the defendant Turpin came up to her and said, "Mrs. Buckson, I am sorry that things turned out the way they did." Said, "But your husband shot first." He said, "We was standing up there on the street on Alabama Avenue when he come out of the house in his underclothes and fired a shot. We ran." He said, "When I ran, I didn't see any reason for me to run because I hadn't done anything, and later I was coming back up E Street and your husband come around the building and told me not to run or he would shoot." And he said, "I shot him the first time, and he grabbed his chest so then I continued shooting him."

BY MR. CAPUTY:

Q. Was anything said by the defendant as to whether the deceased had anything in his hands or whether he had seen anything in his hands? A. Not at that time. He said he shot him because he was afraid but he didn't intend--

THE COURT: Will you speak a little more distinctly? A. I said he shot him because he was afraid, that he didn't intend for it to happen the way it did. He didn't intend for it to turn out the way it did.

76 Mrs. Buckson asked Turpin if he knew her husband. He said no, he had never seen him before that night. Mrs. Buckson asked him if he owned an automobile and he said he wasn't in his car; that he was in one of the other boys' car, and she asked him what kind of car it was. He said it was a '57 Ford, blue in color. Then she asked him if he lived in the neighborhood and he said yes, he lived on E Street.

Q. Was anything said by the defendant as to how far the deceased was from him when he shot him? A. Not at that time, no, sir.

* * * *

77 CROSS EXAMINATION

BY MR. BRYANT:

Q. Now, Mr. Daily, did I understand you to say that Mrs. Buckson asked the defendant Turpin did he have a car and Turpin said something about a friend's car? Would you clear that up for me, please? A. If I remember correctly, Mrs. Turpin--I mean Mrs. Burkson asked Turpin if he had a car. He said yes, but he wasn't in his car, and she asked him if his friend had a car or if they were in a car, one or the other, and he said yes, a '57 Ford. She asked him the color of it and he said it was blue.

78 Q. He didn't say he was ever in any car with any friends, did he? A. No, sir.

* * * *

81 BENJAMIN J. CHAPLIN

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. State your full name and assignment, sir. A. Benjamin J. Chaplin, assigned to Plainclothes in the Fourteenth Precinct.

* * * *

82 Q. Now, I direct your attention to August 14th, 1959. Did you see the defendant Turpin? A. Yes, sir.

83 Q. And when and what time? A. About 1:00 p.m. August 14th.

Q. Where did you see him? A. In the Detective's room at Number 14 Precinct, 42nd and Benning Road, Northeast.

THE COURT: Officer, you will have to speak a little louder because a lot of people have to hear you. If you wish you may use the microphone, but please repeat your last answer. A. In the Detective's room at Number 14 Precinct, 42nd and Benning Road, Northeast.

Q. Did you talk to him on that occasion? A. Yes, sir, I did.

Q. When did you start talking to him? A. About 1:45 p.m., or 2:00 p.m.

Q. And how long did you talk to him? A. Until 5:45 p.m.

Q. Was it continuous talking, sir? A. Except for fifteen minutes, yes, sir.

Q. Now, did you talk to him about the shooting alleged to have taken place on August 13th, 1959? A. Yes, sir.

Q. Now, was any statement made by him concerning the shooting?

THE COURT: What do you mean by statement?

84 Do you mean did he say anything, or write anything, or what?

MR. CAPUTY: Did he say anything, without saying what he said?

THE WITNESS: Yes, sir.

Q. And when did he tell you anything about the shooting?

A. About 5:45 p.m., August 14th.

Q. Is that when he talked about the shooting? A. Yes, sir.

Q. Now, what caused the delay between 2:00 o'clock, when you first talked to him, until 5:45, when he first said anything about the shooting? A. About 3:00 p.m. the defendant stated that if I would let him talk to his wife that he would tell me what happened.

Q. And did his wife come to the precinct station? A. Yes, sir.

Q. What time did the wife come to the precinct station?

A. About 5:15 p.m.

Q. Can you tell us whether the defendant talked to his wife?

A. Yes, he did.

Q. And how soon after the defendant talked to his wife did he tell you anything about the shooting? A. Immediately.

85 Q. Will you tell us what, if anything, he said to you on this occasion?

THE COURT: Do you want to reframe the question?

MR. CAPUTY: Yes.

Q. What did he tell you about the shooting at this time?

MR. BRYANT: May we approach the bench?

THE COURT: You may approach the bench.

(AT THE BENCH:)

MR. BRYANT: Your Honor, just out of an abundance of caution, and for the record, I think I should object to any statements at this time. I think they fall squarely within the rule.

THE COURT: When was the arrest made?

MR. BRYANT: 12:15.

THE COURT: By Officer Ellis.

MR. BRYANT: Yes, Officer Ellis.

THE COURT: He arrested him at 12:15. Before I rule on the objection I think you ought to bring out affirmatively, if it be a fact, Mr. Caputy, whether there was any pressure brought. In other words, there is not sufficient proof yet enabling me to find that the statement was voluntary. In other words, the old rule still applies. The Mallory rule added something else, but it did not abolish the old rule about the statement having to be voluntary.

86 MR. BRYANT: May I ask this: could this be done out of the presence of the jury? It won't be long.

THE COURT: Yes, I think it could and should, on the question of voluntariness only.

MR. BRYANT: Let me say this: I think that all of it comes before your Honor. I don't think you could possibly separate it.

THE COURT: I understand. I am ready to rule, except on the issue of voluntariness, so I will excuse the jury. The other facts are sufficient for me to rule on. You understand what I mean? There are

enough facts already in the record for me to rule on the objection based on the Mallory case, but there is not enough on the issue of voluntariness. I will exclude the jury. You are entitled to have the jury excluded.

(IN OPEN COURT:)

THE COURT: Ladies and gentlemen of the jury, we are going to take up a matter for the next few minutes or so for which your presence is not required. Accordingly, you may retire to the jury room and wait until we are ready to resume the proceedings for which your presence is needed.

(The jury was excluded from the Courtroom.)

THE COURT: Let it be noted that the jury has left the Courtroom and has retired to the jury room. You may now proceed.

87 BY MR. CAPUTY:

Q. Officer Chaplin, at the time you talked to the defendant at Number 14 Precinct on August 14th, around 5:45, was this statement that was made an oral statement or written statement? A. An oral statement.

Q. Now, at the time defendant Turpin made that statement, was any promise given to the defendant in return for that oral statement? A. No, sir.

Q. Was any inducement of any kind given to the defendant in return for that statement? A. No, sir.

Q. Was any threat involved or coercion involved? A. No.

THE COURT: The word "coercion" is a conclusion.

Q. Was any threat made? A. No.

Q. In return for the statement.

THE COURT: "Was there any threats" isn't the only possible kind of coercion.

Q. Any inducement of any kind? A. No, sir.

Q. In return for the statement? A. No, sir.

88 THE COURT: Will you come to the bench, please?

(AT THE BENCH:)

THE COURT: You do not exclude the possibility of his being

beaten, for example. You said there were no threats, no inducements, but that does not exclude the fact that he might have been beaten.

MR. CAPUTY: I am going to ask that.

THE COURT: Bring that out.

MR. CAPUTY: Yes, your Honor.

(IN OPEN COURT:)

Q. Was he struck or beaten, sir, at the precinct station? A. No, sir.

Q. Was any kind of pressure applied upon him in return for this statement? A. No, sir.

Q. In your opinion, was the statement given freely and voluntarily by this defendant? A. Yes, sir.

MR. CAPUTY: I believe that is all.

THE COURT: Mr. Caputy, I know you did not mean to do this, but you limited in your first question to the time at 5:45, was any inducement made to him.

MR. CAPUTY: Thank you, your Honor.

Q. Now, from the time you first saw the defendant at 2:00
89 o'clock and talked to him, was any pressure of any kind used against the defendant Turpin? A. No, sir.

Q. Was any beating or was he struck at any time during the period of time you saw him from 2:00 o'clock on, and you talked to him? A. No, sir.

Q. Was any inducement of any kind given between 2:00 o'clock and 5:45 when he made this statement? A. No, sir.

Q. Were any promises of any kind made, sir? A. No, sir.

Q. Was that statement given freely and voluntarily? A. Yes, sir.

MR. BRYANT: I think that is a conclusion for the Court.

THE COURT: That is a conclusion for the Court to draw.

Q. Will you tell us what you said to him--

THE COURT: Oh, no, no. He will have to testify to that before the jury, if I admit the testimony. Did he receive any food during the

several hours that you were with him?

THE WITNESS: No, sir.

THE COURT: Do you know if he had any lunch after he was arrested.

90 THE WITNESS: Do I know, sir?

THE COURT: Yes.

THE WITNESS: No, sir.

THE COURT: Of course, according to the testimony he was arrested at 12:15. Did he ask for any food?

THE WITNESS: About 5:30, sir, he did.

THE COURT: And what did you say to him?

THE WITNESS: I told him that as soon as the meal man came to the precinct, he would be fed.

THE COURT: When would that be, or when would it have been?

THE WITNESS: Sir, that is sometimes as late as 7:00 o'clock.

THE COURT: Very well. Do you want to ask any questions, Mr. Bryant. I think you may, if you wish.

BY MR. BRYANT:

Q. Mr. Chaplin, you first saw the defendant in the precinct station, is that right? A. Yes, sir.

Q. He had been brought there by Officer Ellis, is that so? A. Yes.

Q. That was sometime between 12:15 and 12:30, is that correct?

91 A. Yes, sir.

Q. At the time you first saw him in the Detective's room at Number 14 precinct, he was at that time being interrogated by Officer Ellis and his partner, was he not? A. That's correct, sir.

Q. When you went in there, you went in for the purpose of interrogation, did you not? A. Yes.

Q. You did interrogate him? A. Yes.

Q. And there came a time, I believe, when Officer McElwain came to the precinct, did he not? A. Yes, sir.

Q. And about what time did Officer McElwain come there?

A. About 5:00 p.m.

Q. All right. Now, you say that except for about fifteen minutes of your own time that you were in there questioning this man, until he gave you some statement at 5:45? A. Yes, sir.

Q. And that questioning was without any other interruption, is that so? A. Yes, sir.

Q. Now, what did you do during the fifteen minute period that you weren't questioning him? A. Interrogated his wife, Mrs. Turpin.

92 Q. But at that time who else was in the room with him interrogating him? A. Detective McElwain.

Q. That was around five o'clock, of course? A. No, sir. I left the room around five-fifteen.

Q. So then it is safe to say that from the time he was first brought into the precinct room, that is, the detective's room, at or about 12:30, let's say, that he was interrogated by either you or Officer Ellis or McElwain or some other officer until 5:45 p.m.? A. Yes, sir.

THE COURT: Let me see if I understand you. I believe you testified that at about 3:00 he said to you that he would tell you about the shooting if he could talk with his wife first, is that correct?

THE WITNESS: Yes.

THE COURT: Then you sent for his wife.

THE WITNESS: His wife was with Detective Rogers and we couldn't locate her and we had to wait.

THE COURT: He eventually saw his wife, she eventually was brought in.

THE WITNESS: Yes.

THE COURT: She came in at 5:15?

93 THE WITNESS: Approximately 5:15.

THE COURT: Well, between three o'clock, when the defendant said to you he would talk about the shooting if he could see his wife first, and the time he saw his wife, did the interrogation continue or did the interrogation stop?

THE WITNESS: It continued, sir.

MR. CAPUTY: May I ask a question, your Honor?

THE COURT: Yes.

BY MR. CAPUTY:

Q. During that period of time that the interrogation continued, did he tell you anything about the shooting? A. No, sir.

MR. CAPUTY: I have no further questions.

MR. BRYANT: I have no further questions.

THE COURT: Very well. Now, do you wish to offer any testimony on this issue while the jury is out, or not?

MR. BRYANT: No, sir. I don't wish to offer any.

THE COURT: Very well. Before bringing in the jury, if counsel wish to argue the matter, I shall be glad to hear counsel in the absence of the jury in support of the objection.

MR. BRYANT: Well, if your Honor please, I believe that in the face of the evidence on this particular question that the admissions are not admissible.

THE COURT: I will hear from you, Mr. Caputy.

94 MR. CAPUTY: It is the position of the Government, your Honor, that within an hour and a half after he had been taken to the precinct station and that they started talking to him about two o'clock, that he said at three he would make a statement and would talk about the shooting if he could talk to his wife.

Now, the officer has also testified during the period of time from three to five-forty five he didn't say anything about the shooting.

THE COURT: Well, this was after the arraignment, was it not?

MR. CAPUTY: No, this is before.

THE COURT: When was he arraigned?

MR. CAPUTY: At eleven o'clock at night.

THE COURT: Oh, I see. According to my notes he was in Municipal Court at ten o'clock. I thought it was 10:00 a.m.

MR. CAPUTY: No, that's at night time. This is all before the arraignment, and we take the position, if your Honor please, that a

mere fact that a period of time passed in and of itself, would not render involuntary the statement that was given by the defendant to the police, because at 3:00 o'clock, a short time after he was at the station, he said, "If you will let me talk to my wife, I will tell you what it was," and I think that statement by him, and the fact that he did talk to his

95 wife, I think the statement was a voluntary one, if your Honor please, and I don't think the question of arraignment has too much bearing on it.

THE COURT: The Court finds that the statement made by the defendant to Officer Chaplin was voluntary. The Court finds this as a fact on the basis of the detailed testimony of Officer Chaplin. That testimony eloquently corroborated by the fact that it is uncontradicted. As sometimes has been said, silence is frequently the best and most significant of testimony. Since this statement was voluntary, the only remaining question is whether there is some rule of exclusion which would require the Court to sustain the objection. The objection is based on the decision of the Supreme Court in the Mallory case.

The Mallory case imposes, as a penalty for violation of rule 5, the exclusion of any statement amde by the defendant during any period of unnecessary delay before he is taken to a committing magistrate. Here the defendant was arrested shortly after noon, specifically about 12:15 p.m. He was taken before a committing magistrate at 10:00 o'clock that evening. This is a homicide case. The Court is of the opinion that a lapse of ten hours between arrest and arraignment is not unreasonable, and therefore, not unnecessary.

Moreover, the statements sought to be introduced in evidence were made at 5:45 p.m., so that only five and a half hours, or there-

96 abouts, expired between the arrest and the time that the statement was made. Surely a lapse of five and a half hours between the arrest and the making of the statement is not unreasonable and does not constitute unnecessary delay.

Part of that delay was caused by the defendant's statement made at about 3:00 o'clock in the afternoon, less than three hours after his

arrest, that he would discuss the shooting with the officer if he could first talk with his wife. But it appears that his wife could not be reached and did not arrive until quarter after five. And that after talking to his wife the defendant immediately made the statement.

I do not believe that there has been any violation of any rights of the defendant in this case. I think the officers acted perfectly reasonably. I think it would have been unreasonable, in a case of such gravity as this one, to have rushed the defendant pall-mall before a committing magistrate immediately after his arrest. It would not have been conducive, certainly to the defendant interests, and it would have been a sacrifice of the public interests, to which the public should not be subjected. I shall overrule the objection and admit the evidence. You may bring the jury in.

(In the presence of the jury:)

THE COURT: You may proceed.

BY MR. CAPUTY:

97 Q. Now you may state what the defendant said to you. A. The defendant stated that shortly after 11:00 p.m. he went to premises 4438 E Street, Southeast, apartment 3, and picked up a pistol that he had there. He stated that his mother and father, Mr. and Mrs. Turpin, were leaving for Canada the next day, and that his wife had asked him to bring the pistol to 221 47th Street, Northeast, where they were staying, for her protection.

He stated that he placed the pistol in his belt, in the front part of his body, pulled a red shirt over the pistol. He left the apartment and walked west on E Street, Southeast, and when at Alabama and E, he thought he saw a person who he knew as Tony.

He called to this individual two times and Tony answered. He stated that he saw Anthony Oliver, whom he referred to as Tony, and one George Diggs standing on one side of the street, which would be the west side of Alabama Avenue, and that he saw--I beg your pardon, I am a little ahead of my story.

At this time, the first time he told me this, he did not know who

these boys were. Later on he identified these boys. I am sorry about that. At this time he told me that when he walked to Alabama and E there were three boys who he did not know, standing around a car, and that a man ran from premises 4800 block Alabama Avenue in his underwear and fired a shot. He stated that he ran. He did not know what happened to the other juveniles, and that when at Texas and E streets,

98 he stated, "What am I running for? I have not done anything."

He stated that he proceeded east on E Street, back toward his apartment, and when at Alabama and E Streets, the deceased jumped from behind a parked car and said, "Come here. Don't run or I'll shoot." He stated that he believed that this man still had his pistol and that he pulled his pistol from his belt and fired several shots as he was running away.

He stated that he went back to his apartment at 4438 E, changed his clothes, left the pistol in the house, and went to the home of his mother at 221 - 47th Street, Northeast.

He stated that he went upstairs and called his wife and told her that he had fired some shots at 4800 block of Alabama Avenue, Southeast. He stated that his wife told him to give himself up. He said that, "I want to be here when the baby comes in October."

THE COURT: What did you say?

THE WITNESS: Turpin told his wife that he did not want to give himself up then, because he wanted to be present when her baby was born in October.

He stated that his wife told him to go to sleep and, "We'll talk about it in the morning." The following morning about 6:00 a.m., Turpin stated that he went into a carry-out shop located at Benning Road at East Capitol Street, Benco Restaurant and while in this restaurant

99 one of the waitresses read an article to him from the newspaper where a man had died as a result of gunshot wounds in the 4800 block of Alabama Avenue Southeast.

Turpin stated that later on that morning he left his job, went to 52nd and East Capitol and located George Diggs and Anthony Oliver,

and told them what had happened.

He stated that Oliver and Diggs were both surprised when he told them that a death had occurred in the 4800 block of Alabama Avenue as a result of the shooting. He stated that--just a minute. That is all he told me at this time, before he called the defendants' names.

BY MR. CAPUTY:

Q. You stated that the defendant Turpin said he thought the deceased had a gun, is that correct? A. Yes.

Q. Now, did he tell you whether he had seen the gun in the deceased's hand? A. No, sir.

Q. What did he say about that? A. He said--he stated that he did not see a gun, but he thought the deceased had one.

MR. CAPUTY: That is all I have, if your Honor please.

100 CROSS EXAMINATION

BY MR. BRYANT:

Q. You are talking about the time that the deceased was shot. He told you he had seen a gun and had been shot at earlier, didn't he? A. Yes.

Q. And did he also tell you when he was told that if he moved that he would shoot, that he thought the deceased at that time still had the gun? A. Yes, sir.

Q. And he shot him because he was scared? A. Yes, sir.

Q. Which one of the officers who went to his house and got the red shirt and trousers that he had on that night, which officer did that?

THE COURT: I think that is outside the scope of direct examination.

MR. BRYANT: Very well. No further questions, your Honor.

* * * *

108 MR. CAPUTY: I would like to offer Government's Exhibits 1 through 6 for identification into evidence at this time.

MR. BRYANT: May we come to the bench?

THE COURT: Yes.

(AT THE BENCH:)

MR. BRYANT: For the record I would like to object to the admission of the defendant's gun, because I raise the question--

THE COURT: Yes, you want to preserve that objection. Objection overruled.

(IN OPEN COURT:)

THE COURT: The exhibits may be received in evidence.

(The articles previously marked as Government's Exhibits Nos. 1 through 6 inclusive for identification were received in evidence.)

* * * *

121 The above-named defendant came on for trial before the HONORABLE ALEXANDER HOLTZOFF, United States District Court Judge, and a jury at 10:00 a.m., December 16th, 1959.

* * * *

144 CHARGE TO THE JURY

THE COURT: (JUDGE ALEXANDER HOLTZOFF)

Ladies and gentlemen of the jury, we have now reached the final stage of this case and the matter is now to be submitted to you for final decision. Before discussing this case, I am going to make a few preliminary remarks concerning your duties and my duties at this trial. No doubt you have already learned what they are from the two weeks that you have already been here, but in case there are any members of the jury who have not, it may be helpful to them if I do so, and moreover, it is my duty, even at the risk of wearisome repetition, to call these matters to the attention of the jury in every case.

It is the function of the Court, that is, it is my function, and my duty, to instruct the jury as to the law that must govern the disposition of the case on trial.

You ladies and gentlemen of the jury are bound and obligated to take the law from the Court and to follow the Court's instructions as to the law. On the other hand, you ladies and gentlemen of the jury decide the facts. You are the sole judges of the facts and you must determine the facts yourselves on the basis of the evidence introduced at this trial.

The Court, in addition to instructing the jury on the law, has, in the Federal Court, still a further function to perform, and that is to summarize the evidence and the facts, to discuss them and to comment
145 on them to the extent to which the Court deems it appropriate to do so. That, however, is done solely in order to aid and assist the jury in arriving at its conclusions. The Court's summary, discussion and comments on the facts and on the evidence are not binding on you. They are intended only to help you. And you need attach to them only such weight as you deem wise and proper.

If your recollection or understanding or view of the evidence differs from the Court's recollection or understanding or view of the evidence, then it is your recollection, your understanding of the evidence and your view of the evidence that must prevail, because I repeat, the final decision on the facts is solely within your domain. My instructions are binding on you only as concerns the law.

The indictment in this case, proceeding now to a discussion of the case, charges the defendant with murder in the first degree. It reads as follows: "On or about August the 13th, 1959, within the District of Columbia, Charles H. Turpin purposely and with deliberate and premeditated malice murder Luther Buckson by means of shooting him with a pistol."

The specific charge is, that late in the evening or the night of August the 12th, the defendant fired a pistol at the deceased Buckson; that he fired four shots at him; that each shot struck Buckson, and that as a result of the gunshot wounds so inflicted, the deceased died.

146 Although this indictment charges murder in the first degree, I have ruled, for reasons I shall explain later, that the evidence introduced by the Government does not justify a verdict of guilty of murder in the first degree, and consequently you may not find the defendant guilty of murder in the first degree. Under this indictment you have a right to find him guilty of the lesser offense of murder in the second degree, or a still lesser offense of manslaughter, or, of course, not guilty.

It is your duty to determine whether the defendant is guilty or not guilty of the homicide with which he is charged. Your decision must be reached solely on the evidence introduced at this trial. You must reach your conclusion calmly, deliberately, impartially and dispassionately, without any feeling or emotion, without any anger on the one side or sympathy on the other, or any other feeling or emotion. You must not be swayed by eloquence or oratory on either side, but must decide the case solely on the evidence and by arguments that appeal to your intellect and not to your feelings.

Before discussing these specific charges in detail, I will summarize a few general principles of law applicable to all criminal cases including, of course, this one. First, the fact that a defendant has been indicted and is charged with a crime is not to be taken as an
147 indication of guilt in itself, because an indictment is merely the procedure and the machinery by which a defendant is brought before the Court and is placed on trial.

Second, every defendant in a criminal case is presumed to be innocent. This presumption of innocence attaches to him throughout the trial. Third, the burden of proof is on the Government to prove the defendant's guilt beyond a reasonable doubt. Unless the Government sustains this burden and proves beyond a reasonable doubt that the defendant has committed every element of the offense charged, the jury must find him not guilty.

I said a moment ago, and I repeat, that the burden is on the Government to prove the defendant guilty beyond a reasonable doubt. But proof beyond a reasonable doubt does not mean proof beyond all doubt whatsoever. It means proof to a moral certainty, and not necessarily proof to a mathematical or absolute certainty.

By a reasonable doubt, as its very name implies, is meant a doubt based on reason, and not just some whimsical speculation or capricious conjecture. Proof beyond a reasonable doubt may be defined as such proof as will result in an abiding conviction of the defendant's guilt on your part, such a conviction as you would be willing

to act upon in the more weighty and important matters relating to your
148 own affairs.

In determining whether the Government has established the charge against the defendant, you will consider and weigh the testimony of all the witnesses who have testified before you, as well as all the circumstances concerning which testimony has been introduced. You are the sole judges of the creditability of witnesses. In other words, you and you alone are to determine whether to believe any witness and the extent to which any witness should be credited.

In case there is any conflict in the testimony or in case different inferences can be drawn from the same testimony, it is for you to resolve the conflict or to determine what inferences to draw. If you find any witness wilfully testified falsely as to any material fact concerning which the witness could not possibly have been mistaken, you are then at liberty, if you deem it wise to do so, to disregard the entire testimony of that witness or any part of that witness' testimony.

The defendant has called a number of witnesses who have testified to his good reputation and good character. Such evidence is admissible as a matter of law. Taken and weighed in connection with all the evidence in the case, evidence of good character may in itself create a reasonable doubt where one otherwise might not exist. In fact, the circumstances may be such in a particular case that an established reputation for good character would alone create a reasonable
149 doubt, although without it the other evidence might be convincing.

This brings me to a more detailed consideration of this case. The Government introduced testimony tending to show, and I shall summarize it in a skeletonized fashion and very briefly, that the deceased Buckson, on the night or evening of August 13th looked out of the window and saw several boys, he thought, tampering with his parked car. Although he was not dressed, he ran out and he fired one shot. The boys ran. The defendant, according to the testimony, had not been one of the boys, or one of the group that was tampering with the car, but

he joined them later, and when the shot was fired they all ran, and he ran with them. Later he stopped, turned around and started walking back home. The defendant at that time was armed with a pistol which he had stuck in his belt. He had gotten it at his own apartment and was walking to his parent's home at the time of the episode to which I just referred.

After he ran a distance, he stopped and started to walk back. In the meantime, according to the evidence introduced by the Government, the deceased went back to his own home, dressed and came out again, but the second time he came out he did not have a gun.

The deceased saw the defendant approaching and called out to him, "Stop, or I'll shoot." The defendant then pulled out, according
150 to the evidence, a pistol and fired four shots at the deceased, each of the shots hitting the deceased, and as a result the deceased died.

After the defendant was arrested, Mrs. Buckson, the widow of the deceased, was brought into the cell block by the police officer and the police officer who was present on that occasion, Lieutenant Daily, testified as follows: "Mrs. Buckson entered the cell block with me and the defendant Turpin came up to her and said, 'Mrs. Buckson, I'm sorry that things turned out the way they did, but your husband shot first.' He said that, 'We was up there standing on the street on Alabama Avenue and he come out of the house in his underclothes and fired a shot and we ran. When I ran, I didn't see any reason for me to run because I hadn't done anything. And later I was coming back up E Street and your husband come around the building and told me not to run or he would shoot. I shot him the first time--the first time I shot him he grabbed his chest, so then I continued shooting him.' He said he shot him because he was afraid, but he did not intend for it to happen the way that it did."

Later, the defendant made a statement to Police Officer Chaplin, and Officer Chaplin, on the witness stand, gave the following summary of what the defendant told him:

"The defendant stated that shortly after 11:00 p.m. he went to
151 premises 4438 E Street, Southeast, apartment 3, and picked up a pistol that he had there. He stated that his mother and father were leaving for Canada the next day and that his wife had asked him to bring the pistol to 221 - 47th Street, Northeast, where they were staying for her protection. He stated that he placed the pistol in his belt in the front part of his body, pulled a red shirt over the pistol, he left the apartment and walked west on E Street, Southeast, and when at Alabama and E Street, he thought he saw a person who he knew as Tony. He called to this individual two times and Tony answered. He stated that he saw Anthony Oliver, whom he referred to as Tony, and one George Diggs standing on one side of the street, which would be the west side of Alabama Avenue, and that he saw--I beg your pardon, I'm getting a little ahead of my story."

I am reading the Officer's testimony. That is what the officer said.

"At this time, the first time he told me this, he did not know who these boys were. Later on, he identified these boys. I am sorry about this. At this time he told me that when he walked to Alabama Avenue and E, there were three boys whom he did not know standing around a car, and that a man ran from premises at 4800 block of Alabama Avenue in his underwear and fired a shot. He stated that he ran. He did not know what happened to the other juveniles, and when at Texas and E Streets he stated, 'What am I running for? I have not done anything.' He stated that he proceeded east on E Street back
152 toward his apartment, and when at Alabama and E Streets the deceased jumped from behind a parked car and said, 'Come here. Don't run or I'll shoot.' He stated that he believed that this man still had his pistol, and that he pulled his pistol from his belt and fired several shots as he was running away.

"He stated that he then went back to his apartment at 4438 E, changed his clothes, left the pistol in the house, and went to the home of his mother at 221 - 47th Street, Northeast."

It is contended in behalf of the defendant, ladies and gentlemen, that he was justified in shooting in self-defense. It is, of course, a rule of law that if the defendant has a right to protect himself against an assault or attempted assault that is sufficiently serious and grave, that if the defendant justifiably and properly acted in self-defense, then your verdict should be not guilty, because the law recognizes the right of self-defense. It is a law of necessity. Every human being has the right to defend himself against death or against serious bodily harm, because preservation is the first law of nature. But, in order to justify the use of a firearm, or any other dangerous weapon in self-defense, it must appear that the defendant was so circumscribed or so situated that he honestly believed, and that he had a reasonable ground for the belief that he could not save himself from serious bodily harm except by using the weapon.

153 Self-defense means self-defense from a present danger of eminently grave danger or injury to the person which might maim him or be permanent in character or which might produce death. In order to be justified in defending himself by the use of a deadly weapon, it must appear, I repeat, that the defendant honestly believed and that he had good reason to believe, that he was in imminent peril of his life, or of grave bodily harm. It is not sufficient that he was just afraid generally, and even in self-defense, a person may not use any greater force than is necessary to defend himself. He may resort to the use of a weapon for self-defense only if he is in imminent peril of his life or in danger of great bodily harm, and I repeat, he may not use any greater force than is reasonably necessary under the circumstances. He may not use a firearm unless it is reasonably necessary. He may not fire more than one shot unless it is reasonably necessary to do so in the protection of himself.

Now, the evidence in this case tends to show that the deceased called to the defendant, "Stop, or I'll shoot." The evidence also does show that a short time before the deceased did have a gun, although the evidence also shows that at the time the shooting took place the

deceased had no gun on his person. All he did was to say, "Stop, or I'll shoot."

Now, is that enough to justify the defendant, under the circum-
154 stances of this case, in firing at the deceased? That is for you to decide. The deceased made no gesture, according to the evidence, which would indicate that he was trying to pull a gun.

Now, also, you have a right to consider that the deceased was hit by four bullets. The defendant fired four bullets, one after another. Even in self-defense, was he justified in firing four shots, if he was justified even in firing one?

According to the deputy coroner it was the combined effect of the four shots that brought about death. All of these matters are for you to consider.

Now, of course, if you find that the defendant was justified under the circumstances in acting as he did, on the ground that it was justifiable self-defense, then your verdict must be not guilty, and that ends the case. However, if you find that the defendant was not justified in firing four shots at the deceased in self-defense, then you may find the defendant guilty, and then you must determine whether he is guilty of murder in the second degree or murder of the lesser offense of manslaughter. I have already indicated that I have eliminated murder in the first degree, as a matter of law.

Now, I will explain to you the difference between murder in the second degree and manslaughter, according to the law of the District
155 of Columbia. Murder is killing of a human being with malice. Now, the word malice is not used in the law in its popular sense. It is a legal term. It does not necessarily mean a malicious or evil or malevolent purpose or a personal hatred or hostility toward the deceased. In the eyes of the law, malice is a general state of mind. Some of the older books say that it implies a heart fatally bent on mischief, and unmindful of social duty.

Malice may also be defined as a condition of mind that prompts a person to do an injurious act wilfully to the person of another. Malice

may be implied or inferred from the surrounding circumstances or the very act committed. But murder which is the unlawful killing of a human being with malice is divided into two degrees, as I have stated; first, murder in the first degree and murder in the second degree. Murder in the first degree is committed with a purpose and intent to kill and with deliberation and premeditation. The evidence shows there was no intent to kill - at least there is no evidence of any intent or of any premeditation or deliberation.

Murder in the second degree, however, is murder committed with malice but either without purpose or intent to kill or without premeditation and deliberation. If there is no purpose or intent to kill, or if there is no premeditation and deliberation, then the unlawful killing if committed with malice, bearing in mind the definition of malice
156 as I have given it to you, constitutes murder in the second degree.

Consequently, if you find the defendant killed the deceased with malice, again, I say bearing in mind the definition of malice as I have given it to you, but without premeditation and deliberation, or without purpose or intent to kill, you may find the defendant guilty of murder in the second degree. But there is still a lesser crime, and that lesser crime is known as manslaughter, and if you find the defendant guilty, you have a right to find him guilty of manslaughter.

Manslaughter is the unlawful killing of a human being without malice. It may be such a killing as happens either on a sudden quarrel or in the commission of an unlawful act without any deliberate intention of doing any mischief at all. If a person justifiably acts in self-defense, but uses more force than is reasonably necessary, and as a result someone is killed, he is guilty of manslaughter.

For example, if a person can successfully defend himself without killing his assailant, and yet he does kill his assailant, he is guilty of manslaughter. Or, if he can defend himself without a firearm but uses his firearm and death results, he is guilty of manslaughter. Or, if he could defend himself by firing one shot but he fires four, and the

four wounds together, combined together cause death, the defendant may be found guilty of manslaughter. Whether it was reasonable to

157 kill in self-defense, under all the circumstances of this case, is for you, ladies and gentlemen, to determine.

If you find that it was not reasonable to do so, even though the defendant thought, and honestly thought he was acting in self-defense, then he may be found guilty of manslaughter.

Now, I repeat again what I said at the beginning of my remarks, that my discussion of the evidence is not binding on you. You must decide the facts yourselves. That is your function, your duty and your responsibility. My instructions are binding on you only as concerns the law.

In this case, to summarize my instructions, you have a right to bring in any one of three verdicts; guilty of murder in the second degree, guilty of manslaughter or not guilty. And, as of course you are aware your verdict must be reached by unanimous vote. Are there any objections or suggestions?

MR. CAPUTY: None from the Government.

MR. BRYANT: May we approach the bench?

(AT THE BENCH:)

MR. BRYANT: If your Honor pleases, you told the jury that they had a right to draw certain inferences, either of guilt or of innocence, but I wanted to ask your Honor to tell them that if the facts allowed for either one of the inferences, one way or the other, that they were compelled to draw the inference of not guilty, although the same fact would support--

158 THE COURT: That is not the law as held in the Holland case.

MR. BRYANT: Thank you.

(IN OPEN COURT:)

* * * *

159 THE COURT: Gentlemen, the Court has received a note from the jury reading as follows: "The jurors desire to see a city map of the locale of the crime. Area to cover 48th and Alabama Avenue,

Southeast, and also show location of 221 - 47th Street, Northeast. Could marks be made to indicate the deceased's home, the defendant's parents' home, the defendant's apartment, cemetery and location of body." This concludes the reading of the note.

As a matter of fact, gentlemen, I thought towards the latter part of the trial, as the evidence developed, that we were trying the case a bit blindly without any map or without the locations of these places being made available, since these locations were quite important. I think there ought to be a map. Now, of course, it is not the function of the Judge to tell counsel how to try their case. Although I had the matter in mind, I did not feel free to make the suggestion that you ought to produce a map. The jury is thinking the same way. What do counsel prefer to do about this? Of course, the case is closed, but I will be very glad to hear counsel.

MR. CAPUTY: Your Honor, I have no objection to getting a plat from the District of Columbia showing these respective locations. I had none in my possession during the course of this trial. There were none as far as I knew in existence that the police had showing the locations.

160 THE COURT: I think a diagram should have been prepared, because you made so much of it in your argument, and so did Mr. Bryant, and I think the duty was on both counsel to show the relative positions of the houses and the street. Frankly, I confess it was difficult for me to follow the oral arguments of counsel to the jury in view of the fact that I couldn't visualize these locations. And if I could not, I can see where the jurors might be unable to. Now, what would you like to do, Mr. Caputy?

MR. CAPUTY: I would like to either get a plat or have the police draw us a diagram.

THE COURT: No, it has to be in the record. Is there such a thing as a plat of that locale?

MR. CAPUTY: I don't know. I would have to check. May I confer with Mr. Lowther?

Your Honor, we have a map in our office, if we can get together with defense counsel, that will show the various streets in the city.

THE COURT: Well, of course, anyone can get an ordinary map of Washington, but the trouble is the individual streets are shown in very small size on a map like that. I think we would need an enlarged, fairly enlarged map of this particular locale. What is your suggestion? Have you any comment to make, Mr. Bryant?

161 MR. BRYANT: If your Honor please, no, I have no comments to make except this: I suspect that if the jurors want anything which will facilitate their arriving at a just verdict that counsel certainly couldn't oppose any such thing. However, just for the sake of the record I would like to suggest that they be allowed to deliberate on just what they have heard.

THE COURT: Well, you have that right. Of course, the word "suggest," to be sure, is a very polite word, but do you make such a motion?

MR. BRYANT: Your Honor, I make the motion that they not be furnished with any exhibits now.

THE COURT: Of course, the Court cannot legally furnish a map that has not been offered in evidence. The only thing the Court could do, if either counsel moves the Court to do so, is to reopen the case and have a map offered in evidence, and then send it into the jury as an exhibit.

MR. CAPUTY: The Government would move, if your Honor please, and does move to reopen the case and submit such a map, to have a map prepared and submit such a map showing the area.

THE COURT: Well, what do you say about this motion?

MR. BRYANT: If your Honor please, I oppose the motion.

THE COURT: I am not going to grant it under the circumstances. Unless both sides consent. Certainly unless the defendant consents I do not think a case ought to be reopened after the jury starts deliberat-

162 ing. However, the Court is in this position, and I want to

inform counsel of this: the Court, of course, will have to answer this note. The Court cannot ignore this note. The Court will be dutybound to call the jury in and state that unfortunately no such city map has been offered in evidence and is not in evidence, and counsel objects to reopening the case for that purpose.

MR. BRYANT: If your Honor please, is it necessary that you tell the jury that I object?

THE COURT: I won't say which counsel. I will state one of the counsel objects to reopening the case.

MR. BRYANT: Could it not be disposed of without even that remark?

THE COURT: No, I think if I do not indicate that to the jury then the jury would naturally get the impression that the Court is very unreasonable, and is giving them no help, and they will get a very bad idea of the administration of justice. However, I see no necessity for my disclosing which counsel objects. That is the reason I am holding this hearing in the absence of the jury. However, I will have to inform them one of the counsel objects to reopening the case.

MR. BRYANT: If your Honor please, I think that the jurors have a high regard for your Honor and have no doubt about the orderly administration of justice, and if the rule is that if the exhibit has not
163 been offered into evidence, if your Honor please, wouldn't that suffice just to tell them that it isn't in evidence?

THE COURT: I am not going to tell the jury the law is so unreasonable and so unjust as not to permit reopening of a case, if necessary. Do you see what I mean?

MR. BRYANT: Yes, but--

THE COURT: I would be posed as being a very unreasonable person and would depict the law to a group of twelve jurors as being unreasonable and arbitrary, but the law is not so arbitrary. By stipulation - in fact, on its own motion, the Court could open the case, but I feel in the exercise of discretion I ought not to reopen it over the objection of defense counsel. After the jury has started deliberating,

but certainly I think I owe it to the jury and myself and to the law, a statement of why I am doing what I am doing. You may bring in the jury.

(Whereupon the jury was brought into the courtroom.)

THE COURT: Will counsel come to the bench?

(AT THE BENCH:)

THE COURT: Why do you object? Why put yourself in that position?

MR. BRYANT: I don't know. I'm scared. I don't know.

THE COURT: I wouldn't put myself in that position if I were defense counsel, however, it is your determination and your responsibility.

164 (IN OPEN COURT:)

THE COURT: Who is the foreman of the jury? Mr. Foreman, the Court has received your note reading as follows: "The jurors desire to see a city map, streets of the locale of the crime, area to cover 48th and Alabama Avenue, Southeast, and also show the location of 221 - 47th Street, Northeast. Could marks be made to indicate deceased's home, defendant's parents' home, defendant's apartment, cemetery and location of body?" I think that is a very intelligent request, and I wish I were in a position to comply with it, because I have no doubt that it would be conducive to an intelligent and just consideration of the case. Unfortunately, the situation is this: neither side offered in evidence a map of the locale. They could have, but they did not see fit to do so. Perhaps they did not realize its desirability. That is probably the answer.

Under the law, I cannot get you a map unless it is an exhibit in the case. The only way to make it an exhibit in the case would be for the Court to reopen the case for the purpose of having a map offered in evidence. Before I brought the jury in I laid the matter before counsel and one of the counsel, and I don't think I should identify which one, objects to the case being reopened for the purpose of offering a map in evidence and sending it to the jury. Under the circumstances

I very much regret to say that I have no alternative but to ask you to
165 continue your deliberations without the aid of the map. Under all the circumstances of the case I felt it would be appropriate for the Court to reopen the case provided both counsel consented, but one counsel refuses to consent. Thank you. You may resume your deliberations.

(Whereupon at 2:00 o'clock p.m. the jury retired to their jury room for deliberation.)

At 5:35 o'clock p.m. the same day, the jury was brought back into the courtroom and the following proceedings were had in open court.)

THE COURT: Mr. Foreman, the Court has received your note reading as follows: It is respectfully requested that Judge Holtzoff redefine or clarify the terms self-defense, excessive force and the significance of the defendant's frame of mind at the time of the commission of the crime in connection with self-defense and excessive force.

I am very glad to comply with this request. First, self-defense: if a person is being attacked or in real danger of being attacked, seriously attacked, then he has a right to protect himself. That is self-defense. That is fundamental. Preservation is the first law of nature. But he must be in real danger. He must be actually attacked or in real danger of being attacked, and he must have a reasonable ground to believe that he is about to be attacked. And also, that he has no other way of protecting himself except by taking the step that he has taken. That is self-defense. It is limited, however, to the rule that one may
166 not use excessive force. That means this: a person who is in a position of exercising his right of self-defense has no right to go any further than is necessary for his own safety. If he can protect himself without killing his attacker, why, he may not kill his attacker. If killing his attacker is the only reasonable way of protecting himself, then, of course, he has a right to kill him. But if he can protect himself by not going as far, then his right of self-defense does not go as

far as to kill his attacker. Or, as in this case, even if it was reasonably necessary to use a firearm, if he could protect himself by firing one shot, he cannot fire any more.

Now, it is for the jury to consider what was reasonable to do under the circumstances, but a person in exercising his right of self-defense is not permitted to go any farther than is reasonably necessary to protect himself.

Now, the significance of the defendant's frame of mind at the time of the commission of the crime in connection with self-defense and excessive force: the significance is this: in the first place, in order to exercise his right of self-defense, the person must honestly think that he is in serious danger. That is the significance of his frame of mind. But it isn't enough that he honestly think that he is in serious danger. His belief must be reasonable and not just caused by nervousness or by an upset state of mind or something of that sort. There
167 must be a reasonable basis for the belief that he is in danger and, in addition, there must be an honest belief that he is in danger.

I wonder if I have adequately answered each of those questions, Mr. Foreman?

MR. FOREMAN: I believe so.

THE COURT: Are there any other questions that you or any member of the jury desire to ask? If not, you may retire again and resume your deliberations. Did you wish to address the Court?

MR. BRYANT: May we come to the bench?

THE COURT: Yes.

(AT THE BENCH:)

MR. BRYANT: If your Honor please, I think that you might have done it in your last remarks, but in the beginning you told the jury the defendant, in order to exercise self-defense, must actually be in real danger. Then later on, you did say he must think so. I would like for it to be told to them that if the facts are found, as a matter of fact, later on that he could not, or that he was not in danger, but at the time he thought he was by virtue of the circumstances, and that

there were circumstances which were such that would allow him to draw that conclusion, then he acted--

THE COURT: I do not think that I shall expand my explanation. I think my definitions were responsive to the question of the jury and I

168 do not think I shall go beyond that question.

MR. BRYANT: Very well, your Honor.

* * * * *

[Filed February 1, 1960]

JUDGMENT AND COMMITMENT

On this 29th day of January 1960, came the attorney for the government and the defendant appeared in person and by his counsel, Wm. B. Bryant, Esquire

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of MANSLAUGHTER and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative under the provisions of the Federal Youth Correction Act, section 5010(b) of Title 18 United States Code.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Alexander Holtzoff
United States District Judge

* * * *

[Filed January 29, 1960]

NOTICE OF APPEAL

Name and address of appellant: Charles H. Turpin, 221 47th St., N. W., Washington, D. C.

Name and address of appellant's attorney: William B. Bryant, 615 F St., N. W., Washington, D. C.

Offense: Manslaughter

Concise statement of judgment or order, giving date, and any sentence: January 29, 1960, Sentenced under Youth Corrections Act

Name of institution where now confined, if not on bail:

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

January 29, 1960

/s/ Charles H. Turpin
Appellant

/s/ William B. Bryant
Attorney for Appellant

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15661

CHARLES B. TURPIN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

OLIVER GASCH,
United States Attorney.

CARL W. BELCHER,
NATHAN J. PAULSON,
Assistant United States Attorneys.

United States Court of Appeals
For the
District of Columbia Circuit
FILED
MAY 31 1950
Joseph W. Stewart
CLERK

QUESTIONS PRESENTED

Where the facts disclose that appellant, who was arrested upon probable cause, made a voluntary exculpatory statement to the deceased's wife a half hour after his preliminary hearing before the United States Commissioner; that he had also made a similar statement to the police prior to the preliminary hearing; and that the testimony of the post-hearing statement was received in evidence on the trial prior to that of the ante-hearing statement; in the opinion of the appellee, the following questions are presented:

1. Was the voluntary exculpatory statement made to the deceased's wife admissible into evidence?

2. Was the voluntary exculpatory statement made at the police precinct admissible into evidence?

3. Did the trial court's instruction as to an item requested by the jury prejudice appellant?

4. Was the court's instruction as to self defense proper?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15661

CHARLES S. TURPIN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRIC OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On September 8, 1959, there was filed in the District Court an indictment charging appellant with murder (J.A. 5). On September 11, 1959, appellant entered a plea of not guilty and subsequently released on bond. On December 17, 1959, he was found guilty of manslaughter. On January 29, 1960, he was committed to the Attorney General under the provisions of the Federal Youth Correction Act (J.A. 61). This appeal followed (J.A. 62).

Catherine Buckson testified that on August 12th and 13th, 1959, she had been the wife of the deceased who had been a Staff Sergeant in the Air Force. On August 12, 1959, the deceased returned home from his part time job at Montgomery Ward (Tr. 4) at approximately 9:35 p.m. (J.A. 7); that while doing some small chores, he looked out the window and saw someone "at his car" and that after "He ran out there and he came back in. He called the policeman" (J.A. 7). He then dressed himself and walked out of the apartment (J.A. 8) which was the last time she saw him alive. On August 14th, she saw

the appellant at the Municipal Court and had a conversation with him (J.A. 10); that that conversation was had in the cell block immediately in the rear of the courtroom (J.A. 11) after appellant's preliminary hearing before a Municipal Court judge (J.A. 11); and occurred within a half hour thereafter (J.A. 11).

Appellant's objection[1] to the testimony regarding the contents of the conversation was denied by the court upon the ground "that the rule of the *Mallory* case only applies to statements made before the prisoner is brought before the magistrate. This statement was made after he was brought before the magistrate. Secondly, the rule of the *Mallory* case only applies to statements made to a government officer. It does not apply to statements made to a third person * * *" (J.A. 12). The witness, continuing her testimony, stated that appellant said "Mrs. Buckson, I am sorry I shot your husband. I am sorry. I didn't intend for it to be that way" (J.A. 13). He also stated that "he was in his shorts and there was a group of teenagers on the corner and they must have been the ones hanging around his car. Your husband went back into the house and he came out dressed. He came up the street where we were talking and we had some words. I thought he still had the gun, so I shot him. I don't know how many shots I fired; I just turned in loose" (J.A. 13, 14).

Edgar Rudolph Johnson testified that on August 12, 1959 he went, with two friends named Diggs and Oliver, to the scene of the crime with the secondary purpose of "get[ting] some fenderskirts" (J.A. 16) from some automobiles (J.A. 17). While they walked down Alabama Avenue "a friend came up the street as they were ready to go home" (J.A. 17). This friend was the appellant (J.A. 17) whom he noticed had a gun in his belt because he showed it to him (J.A. 18). As they were standing there they saw a man in his underwear come out of a house and fire a shot after which they all ran (J.A. 18). Appellant, Oliver and the witness ran about two blocks, after which appellant said he was going home (J.A. 19), within five minutes after appellant left and while the witness waited

[1] At this point counsel advised the court that he was not relying upon *Mallory* for his objection but upon *Trilling*.

for Oliver to return with their car, he heard about four shots (J.A. 19). The witness admitted that he had twice pled guilty to taking a man's automobile and stripping it (Tr. 37).

Lee M. Fisher testified that he lived on Alabama Avenue; that about midnight on the days in question while "laying across" his bed, he heard what sounded like a shot, followed after a short interval by five more shots (J.A. 20); that he looked out the window and saw a man bending over a figure (J.A. 21); that he heard someone call for help twice (J.A. 21); that he went down stairs and spoke to the deceased and that he observed no weapons of any kind laying around (J.A. 21).

Robert E. Ellis, a member of the Metropolitan Police Department, testified that he responded to a call on August 13th in the early hours of the morning to the 4800 block of Alabama Avenue, Southeast, and saw the deceased (J.A. 25). He thereafter arrested appellant at 12:10 p.m. at the latter's place of employment from whence he took him to No. 14 precinct, arriving there at "a little after twenty minutes after twelve" (J.A. 26).

Lt. Edward R. Dailey of the Metropolitan Police Department, testified that on August 14th at approximately 11:30 p.m. he, Detective Chaplin and appellant were in the cell block at the Municipal Court (J.A. 31) immediately after appellant's "arraignment" (J.A. 32). He stated that appellant told Mrs. Buckson "I am sorry that things turned out the way they did, but your husband shot first." We was [sic] standing up there on the street on Alabama Avenue, when he come out of the house in his underwear and fired a shot. We ran. When I ran, I didn't see any reason for me to run because I hadn't done anything and later I was coming back up E Street and your husband come around the building and told me not to run or he would shoot. I shot him the first time, and he grabbed his chest so then I continued shooting him" (J.A. 32). The witness further stated that appellant told him "that he shot him because he was afraid and that he didn't intend for it to happen the way it did" (J.A. 33).

Benjamin J. Chaplin, plainclothes officer, Metropolitan Police Department, testified that on August 14, 1959 he saw appellant at about 1:00 p.m. in the Detectives' Room at the

No. 14 Precinct (J.A. 33, 34); that he started talking to him at about 1:45 or 2:00 p.m. and talked to him until 5:45 p.m. continuously except for fifteen minutes (J.A. 34) about the shooting alleged to have taken place on August 13th; that about 3:00 p.m. the appellant stated that "If I would let him talk to his wife that he would tell me what happened"; that his wife came to the precinct arriving there at approximately 5:15 p.m.; that appellant talked to his wife and immediately after so doing told him about the shooting (J.A. 34, 35).

At this point a hearing was held outside the presence of the jury solely for the purpose of determining whether the statement made was or was not voluntary (J.A. 35, 36).

Proceedings outside the jury's presence

Officer Chaplin testified that around 5:45 appellant made an oral statement; that no promises or inducements had been made; that no threats or coercion were involved; that no physical punishment had been inflicted, nor was any kind of pressure ever applied to him (J.A. 36, 37).

Upon cross examination the witness stated that Officer Ellis had first brought appellant to the precinct between 12:15 and 12:30 and that when the witness first saw appellant the latter was being interrogated by Officer Ellis and his partner (J.A. 38). During the period of time while awaiting appellant's wife the interrogation continued but appellant told police nothing about the shooting (J.A. 40).

The court then found that appellant's statement had been voluntary (J.A. 41). It stated that there was no unreasonable or unnecessary delay as defined in *Mallory* because in a homicide case a lapse of ten hours between arrest and arraignment is not unreasonable. In the instant case only five and one-half hours expired between arrest and the statement. This was not an unnecessary delay (J.A. 41). Part of that delay was caused by appellant's statement at 3:00 that he wanted to see his wife (J.A. 42). The court further held that it would have been unreasonable in the case of such gravity as the instant one to have rushed the appellant to a committing magistrate immediately after his arrest. It would not have been

conducive to either the appellant or the public's interests (J.A. 42).

The trial continued. Detective Chaplin testified that appellant stated that since his father and mother were leaving for Canada the next day, his wife had asked him to bring the pistol which was in their home to the place where they were staying; that he placed the pistol in his belt in the front part of his body and pulled the red shirt over it (J.A. 42); that he met Oliver and Diggs; that when he met them a man ran from premises 4800 Alabama Avenue and fired a shot; that he ran (J.A. 43); that after running, he said to himself that he had done nothing and thereupon proceeded to return and, when he reached Alabama and E Streets, the deceased jumped from behind a parked car and said "Come here, don't run or I'll shoot"; that believing the man still had his pistol, he pulled his pistol from his belt and fired several shots as he was running away. He went to his mother's home and told his wife of the shooting; that she advised him to give himself up but that he said he wanted to be with her when the baby came in October (J.A. 43).

Upon cross examination the officers stated that appellant told him that he shot the deceased because he was scared (J.A. 44). After the government rested appellant moved for judgment of acquittal which was denied (Tr. 108, 109), but the trial judge informed counsel that he would submit only the question of murder in the second degree and manslaughter to the jury.

Paulette Harris Turpin testifying on behalf of appellant corroborated the police officer's statement regarding appellant's purpose in bringing back the gun to the house where they were staying (Tr. 118).

The court then instructed the jury fully and completely. The jury, during deliberations requested of the court a desire to see a city map of the locale of the crime (J.A. 54). A discussion was had between court and counsel, during which appellant objected to providing a map (J.A. 56). The jury was returned to the courtroom and advised that they could not have a map because one counsel objected to it (J.A. 58).

Thereafter, the jury sent a note to the trial court requesting the court to "redefine or clarify the terms self-defense, excessive force and the significance of the defandant's frame of mind at the time of the commission of the crime in connection with self-defense and excessive force" (J.A. 59). The trial court then proceeded to answer the question (J.A. 59, 60).

STATUTE INVOLVED

Title 22, District of Columbia Code, Section 2405, provides:

> *Punishment for manslaughter:* "Whoever commits manslaughter shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding fifteen years, or by both such fine and imprisonment."

SUMMARY OF ARGUMENT

The voluntary exculpatory statement made subsequent to the preliminary hearing was admissible. Appellant had been arrested on probable cause. He was in lawful custody at the time he chose to speak to the deceased's wife. Assuming *arguendo*, a violation of the *Mallory* rule as to the statement made prior to the preliminary hearing, this statement was admissible because it was cumulative, now prejudicial and actually helped appellant. In any event an analysis of the facts discloses that this did not violate *Mallory* since the statement was exculpatory. Length of detention alone does not render inadmissible a statement taken prior to a preliminary hearing. Other factors must be considered. Here appellant's request to see and speak with his wife sufficiently justified keeping him at the precinct until she could be contacted and brought in. The time element involved in the instant case clearly negates the application of *Mallory* from 3 p.m. until the voluntary statement was given.

The record does not sustain appellant's contention that the trial judge in instructing the jury as to its request for a map failed to give appellant a fair trial. No objections were made as to the trial court's demeanor in this posture of the case.

The instructions as to self defense when taken as a whole were proper. The trial court covered each problem sufficiently so that the jury was not confused.

ARGUMENT

I. The trial court committed no error in permitting testimony regarding the exculpatory statements to be heard by the jury

The record discloses that at least a half hour subsequent to appellant's appearance before the United States Commissioner at which preliminary hearing he was informed of his rights, he met the deceased's wife. At that time he freely and voluntarily made his exculpatory statement regarding the events leading up to the commission of the crime. This testimony elicited from the first witness was corroborated by Lieutenant Daily of the Metropolitan Police Department and is admissible. *Carter* v. *United States*, — U.S. App. D.C. — (No. 15281, decided March 17, 1960); *Carignan* v. *United States*, 342 U.S. 36 (1951). Thereafter a witness testified that appellant, with a gun on his person was at the scene of the crime during the crucial period. Officer Chaplin of the Metropolitan Police Department then testified concerning an exculpatory statement made by appellant at the police precinct following his arrest and prior to his production before the United States Commissioner. This statement was properly introduced into evidence because (1) it was cumulative to the statement made to the deceased's wife of which testimony had already been taken (2) if there were error it was harmless and no prejudice resulted to him and (3) it actually helped him because if believed by the jury was sufficiently strong in nature to warrant an acquittal.

Appellant contends that the testimony regarding both statements were inadmissible because the one first testified to was a produce of the second which violated the *Mallory*[2] rule. Since probable cause to arrest is not challenged, appellant's contention regarding the statement made immediately subsequent to the preliminary hearing must fail. *Carter* and *Goldsmith* v. *United States*, *supra* Cf. *Lauderdale* v. *United States*, 105 U.S. App. D.C. 292, 266 F. 2d 696 where this issue was briefed and argued. There was no questioning for the purpose of justifying the arrest. Cf. *Jackson* v. *United States*,

[2] 354 U.S. 499 (1957).

— U.S. App. D.C. —, 273 F. 2d 521 (1959). *Mallory* does not hold that because of the duration of detention any statement made during such detention automatically becomes inadmissible. The type of case, exceptional circumstances and other factors must also be considered when applying the rule.

Probable cause to arrest has never been challenged by appellant nor does he claim now that there was lack of probable cause to arrest appellant for the instant crime. The interrogation which took place cannot be construed to have been conducted for the purpose of establishing probable cause to arrest appellant. The record discloses that although appellant was questioned from (either 12:30 or 1:45) until 3 p.m. this necessarily included time spent in processing and booking. The resultant detention after 3 p.m. was to enable the police to bring to fruition appellant's request to speak with his wife for the purpose of conferring with her regarding appellant's future course of action. The testimony discloses that appellant advised the police at 3 p.m. that he would tell about the shooting if he could talk with his wife first (J.A. 34, 39). It may be inferred that he intended to speak after mature reflection and discussion with his wife since the latter had previously advised him to surrender (J.A. 43). Unfortunately his wife could not be located immediately and consequently did not arrive until 5:15 (J.A. 34, 39). After speaking with her, however, he made the exculpatory statements heretofore referred to (J.A. 34, 35). The record discloses that there was no coercion, threats, physical or psychological pressure, inducements or promises made to appellant (J.A. 37). The trial court found the statement to have been given freely and voluntarily.

Since this was a capital case, a 5½ hour lapse of time between arrest and the time the statement was made should not in and of itself be grounds for destroying the validity of such a statement. Some time was consumed for the purpose of booking and processing appellant. Part of the time was consumed in locating appellant's wife and bringing her to the precinct. In addition he told nothing of the shooting during the interrogation. The time consumed in these matters when subtracted from the overall elapsed time decreases the time of alleged illegal detention.

At the time testimony was given regarding the statement made at the precinct, the same facts had already been established clearly and unequivocably by the testimony of the deceased's wife and a responsible police officer in recounting what had occurred after appellant's appearance before the United States Commissioner from whom he had been advised of his rights. Thus, the testimony regarding the exculpatory statement must be construed to be purely cumulative to the first statement. *Porter* v. *United States,* 103 U.S. App. D.C. 385, 258 F. 2d 615 (1958). Since there were no appreciable additions in the second testimony, no prejudice resulted to appellant. Since *Mallory* in construing McNabb and Upshaw determined that the rule requiring prompt arraignment was promulgated to prevent admission into evidence incriminating statements *Mallory* does not apply here for no such statements were elicited from appellant. *Cf. Starr* v. *United States,* 105 U.S. App. D.C. 91, 264, F. 2d 377 (1958). In fact, if the statement as testified to had been believed by the jury, it could easily have justified a judgment of acquittal. Appellant's urge corroborated that part of the statement regarding appellant's purposes of carrying the gun (Tr. 118). Not only do the instant exculpatory statements not fall within *Mallory's* interdiction but assuming error it was not prejudicial error. In *Guy* v. *United States,* 71 App. D.C. 89, 91, 92, 107 F. 2d 288, 290, 291 *cert. denied,* 308 U.S. 618 (1939), the court stated:

> when guilt is clearly established by competent evidence, error in the admission or exclusion of other evidence or in the charge to the jury which does not affect the substantial rights of the accused does not call for the reversal of a conviction.

See also *Wheeler* v. *United States,* 82 U.S. App. D.C. 363, 165 F. 2d 225 (1947), *cert. denied,* 333 U.S. 829 (1948); *Kotteakos* v. *United States,* 328 U.S. 750, 764–5 (1946).

II. The instructions were proper

The instructions originally given in the charge and the supplementary instructions given at the written request of the jury were proper. They specifically set forth a correct interpretation of the law and did not confuse the jury. An instruc-

tion is legally sufficient when, as a whole, it sets forth fairly and adequately, statements of the law. *Graham* v. *United States,* 88 U.S. App. D.C. 129, 187 F. 2d 87 (1958), *cert. denied,* 341 U.S. 920. It is axiomatic that a charge to a jury must be considered as a whole. *Kinard* v. *United States,* 69 App. D.C. 322, 101 F. 2d 246; *McFarland* v. *United States,* 86 U.S. App. D.C. 19, 174 F. 2d 538 (1949). In the instant case, the charge when read in its entirety and not out of context accurately and fairly constituted an adequate statement of the law. The apparent and real danger doctrine is not omitted in either of the instructions. (J.A. 51, 59–61.)

III. The court's instruction to the jury regarding the absence of a map was proper

Appellant's contention that the Court singled him out as the person who in effect was balking the will of the jury by refusing to accede to its request is not supported by the record. Nowhere does the transcript of testimony disclose that counsel complained to the court about its alleged unjudicial conduct. Under these circumstances this Court cannot speculate as to the validity of appellant's claim. *Vinci* v. *United States,* 81 U.S. App. D.C. 386, 159 F. 2d 777 (1947); *Billeci* v. *United States,* 87 U.S. App. D.C. 274, 87 F. 2d 274 (1950); *Holmes* v. *United States,* 84 U.S. App. D.C. 168, 171 F. 2d 1022 (1948).

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

OLIVER GASCH,
United States Attorney.
CARL W. BELCHER,
NATHAN J. PAULSON,
Assistant United States Attorneys.

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